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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JANINE TAVOULARIS, Plaintiff and Appellant, v. BANK OF AMERICA, N.A., et al., Defendants and Respondents.	B283860 (Los Angeles County Super. Ct. No. YC070937)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

Janine Tavoularis, in pro. per., for Plaintiff and Appellant.

Dykema Gossett, Brian H. Newman and Jyoti P. Avila for Defendants and Respondents.

JPMorgan Chase Bank (Chase) sold Tom and Janine Tavoularis's property to Bank of America at a trustee's sale after the Tavoularises defaulted on a $1.25 million loan secured by a deed of trust on the property. After the sale, the Tavoularises filed suit against Chase, Bank of America, and others, alleging that the defendants had acted in concert to deprive the Tavoularises of their property; those actions, the Tavoularises asserted, also constituted elder abuse. The trial court granted the defendants' motion for summary judgment.

Janine Tavoularis appeals entry of judgment on only the elder abuse cause of action.[1] Because Tavoularis offers no set of facts upon which she could prevail, we affirm.

BACKGROUND

Factual Background

In April 2006, Washington Mutual Bank (WaMu) loaned the Tavoularises $1.25 million. The Tavoularises secured the loan with a deed of trust on their Rancho Palos Verdes home (the property). In 2008, the Federal Deposit Insurance Corporation (FDIC) closed WaMu and sold its assets, including the Tavoularises' loan, to Chase.

The Tavoularises made no payments on the loan after June 2010. Bank of America purchased the property at a trustee's sale on August 6, 2015.

Procedural Background

On November 3, 2015, the Tavoularises filed suit against Bank of America, Chase, WaMu, Mortgage Electronic Registration Systems (MERS), California Reconveyance

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[1] Mr. Tavoularis is not a party to this appeal. As used in the opinion, therefore, the singular Tavoularis refers to only Mrs. Tavoularis.

Company, and MTC Financial. The Tavoularises' complaint alleged 11 causes of action based on their claim that the defendants engaged in a joint scheme to deprive the Tavoularises of their property. The complaint alleged that the Tavoularises had requested various forms of help from various defendants and had been wrongfully denied. During the process, the complaint alleged, Chase had been abusive to the Tavoularises. The complaint also alleged various procedural flaws in the process that resulted in the trustee's sale and the transfer of title to Bank of America. Although the complaint contained no factual allegations regarding the origination of the loan, the complaint did contain this sentence: "The core of this action arises from the origination and servicing of a purported mortgage loan from [Chase] as alleged successor by merger to [WaMu] to [the Tavoularises] to refinance residential real property and the subsequent initiation of proceedings designed to lead to foreclosure of the Subject residential Property."

Based on a common set of facts, the complaint alleged negligence, fraud, a cause of action to set aside the trustee's sale, a cause of action to void or cancel the assignment of the deed of trust, wrongful foreclosure, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, violations of the Unfair Competition Law, a cause of action to quiet title, and a cause of action for elder abuse under Welfare and Institutions Code section 15657.5.

MTC Financial filed a declaration of nonmonetary status under Civil Code section 2924l on December 4, 2015.[2] The

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[2] "In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a

Tavoularises dismissed MERS from the case on December 8, 2015, and WaMu on April 20, 2016. On September 28, 2016, the remaining defendants—Bank of America, Chase, and California Reconveyance Company—moved for summary judgment on a variety of grounds. The 11th cause of action, the moving defendants argued, was "based entirely on the same substantive allegations and theories" as various other causes of action, and should therefore be dismissed along with the rest of the case.

On March 16, 2017, the trial court heard the motion for summary judgment. At that hearing, however, the Tavoularises argued that the defendants had raised new contentions in their reply brief to which the Tavoularises had no opportunity to

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reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status." (Civ. Code, § 2924l, subd. (a).) "The parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee." (Civ. Code, § 2924l, subd. (c).) "In the event that no objection is served within the 15-day objection period, the trustee shall not be required to participate any further in the action or proceeding, shall not be subject to any monetary awards as and for damages, attorneys' fees or costs, shall be required to respond to any discovery requests as a nonparty, and shall be bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding." (Civ. Code, § 2924l, subd. (d).)

No party objected to MTC Financial's declaration of nonmonetary status.

respond. The trial court continued the hearing and allowed the Tavoularises to supplement their filings to address what they called the "newly raised issues." In their supplemental papers, the Tavoularises briefed, among others, issues related to the 2006 loan origination.

After the continued hearing on April 13, 2017, the trial court granted the defendants' motion for summary judgment. As to the elder abuse (11th) cause of action, the trial court granted judgment for the defendants "on the grounds that the Court finds it is undisputed that these claims are derivative of the alleged wrongful conduct outlined in the other causes of action and fail for the same reasons. . . . With the Supplemental opposition, [the Tavoularises] allege elder abuse stemming from the origination of the loan by WaMu, but [the Tavoularises] do not dispute that they entered into an enforceable Note and Deed of Trust and WaMu is not a party to this action. See Plaintiffs' Separate Statement, Nos. 1-4. Finally, Chase assumed no origination-related liability pursuant to the P & A agreement. See Scott v. JPMorgan Chase Bank (2013) 214 Cal.App.4th 743, 762."

Mrs. Tavoularis timely appealed.

DISCUSSION

Tavoularis contends in three issues that the trial court erred in granting summary judgment based only on the complaint's elder abuse (11th) cause of action.

"A trial court should grant summary judgment 'if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' (Code Civ. Proc., § 437c, subd. (c).) . . . A triable issue of material fact exists where 'the evidence would allow a reasonable trier of fact to find the underlying fact in favor

of the party opposing the motion in accordance with the applicable standard of proof.' " (*Neiman v. Leo A. Daly Co.* (2012) 210 Cal.App.4th 962, 967, citations omitted.)

" 'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections were made and sustained. [Citations.]' [Citation.] We view the evidence and the inferences reasonably drawn from the evidence 'in the light most favorable to the opposing party.' " (*Neiman v. Leo A. Daly Co.*, *supra*, 210 Cal.App.4th at pp. 967-968.)

Tavoularis first contends, based on allegations regarding the 2006 loan origination, that her entire claim of elder abuse is a disputed material fact. Second, she contends, the trial court improperly ignored her evidence regarding the 2006 loan origination and found only that the elder abuse cause of action was "derivative" of other causes of action, and therefore barred. Finally, Tavoularis contends that public policy against elder abuse compels reversal.

The moving defendants contend summary judgment was appropriate. They contend that if the elder abuse claim was, to use their description, derivative of other causes of action, the legal insufficiency of those causes of action means the elder abuse cause of action is also fatally flawed. If, however, Tavoularis's elder abuse cause of action stands on its own because it was about loan origination and *not* the facts underpinning the remaining causes of action, then (1) the claim is barred by the statute of limitations, and (2) the moving defendants are not liable for WaMu's conduct as a matter of law.

We agree with the defendants.

We are faced with two potential factual underpinnings for Tavoularis's elder abuse cause of action. Either (1) the defendants' actions that constituted negligence, fraud, wrongful foreclosure, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment *also* constituted elder abuse, *or* (2) WaMu's origination of the loan in 2006 constituted elder abuse.

If Tavoularis relies on the first set of facts, she cannot overcome the trial court's judgment that the defendants' actions *did not*, *as a matter of law*, constitute negligence, fraud, wrongful foreclosure, breach of contract, breach of the implied covenant of good faith and fair dealing, or unjust enrichment. In that case, the elder abuse cause of action is "incidental to and depend[s] upon the validity (or invalidity) of the preceding claims for relief. That is, [the elder abuse claim] stand[s] or fall[s] depending on the fate of the antecedent substantive causes of action." (*Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 178.) The trial court granted summary judgment on those causes of action, and Tavoularis has not challenged any of that portion of the judgment.

If, however, Tavoularis relies on the second set of facts—that WaMu's 2006 origination of the loan constituted elder abuse—then her cause of action is time-barred and barred by the Purchase and Assumption Agreement by which the FDIC transferred WaMu's assets to Chase.

Tavoularis's elder abuse cause of action carried a four-year statute of limitations. (Welf. & Inst. Code, § 15657.7.) The Tavoularises took their WaMu loan on April 7, 2006. They filed their lawsuit on November 3, 2015. If the Tavoularises' lawsuit

was about events surrounding the loan's origination, it was filed more than five years too late.

Tavoularis's contention that Bank of America, Chase, or California Reconveyance Company should be liable for WaMu's conduct originating the Tavoularises' loan also falls short.

The Purchase and Assumption Agreement by which the FDIC transferred WaMu's assets to Chase contains the following language: "**2.5 Borrower Claims.** Notwithstanding anything to the contrary in this Agreement, any liability associated with borrower claims for payment of or liability to any borrower for monetary relief, or that provide for any other form of relief to any borrower, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to any loan or commitment to lend made by the Failed Bank prior to failure, or to any loan made by a third party in connection with a loan which is or was held by the Failed Bank, or otherwise arising in connection with the Failed Bank's lending or loan purchase activities are specifically not assumed by the Assuming Bank." The moving defendants' liability for events surrounding the origination of WaMu's loan to the Tavoularises is "foreclosed as a matter of law by the legal effect of the P & A Agreement, which provided that [Chase] did not assume liability for borrower claims related to loans or loan commitments made by WaMu . . . ." (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 762.)

Although Tavoularis has not articulated any set of facts under which an elder abuse claim remains viable, she also

contends, without elaborating, that the public policy in favor of protecting the elderly from financial abuse requires us to reverse. We remain bound by the law, however. And the applicable law here defeats Tavoularis's elder abuse cause of action under either set of facts upon which she elects to rely. We therefore affirm the trial court's judgment.

DISPOSITION

The trial court's judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.