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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MARY A. STEWART, Plaintiff and Appellant, v. STATE OF CALIFORNIA, HOUSING FINANCE AGENCY et al., Defendants and Respondents.	B235874 (Los Angeles County Super. Ct. No. BC447465)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Affirmed.

Mary A. Stewart, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, David S. Chaney, Chief Assistant Attorney General, Steven M. Gevercer, Senior Assistant Attorney General, Pamela J. Holmes, and Elizabeth G. O'Donnell, Deputy Attorneys General, for Defendants and Respondents.

Mary A. Stewart appeals from the judgment entered after the trial court sustained without leave to amend the demurrers of the California Housing Finance Agency (CalHFA) and its employee Michelle Novoa-Castillo to Stewart's second amended complaint for violation of her state constitutional rights and intentional infliction of emotional distress. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Stewart's Allegations Regarding the Denial of a Loan to a Potential Buyer of Her Home*

According to Stewart's second amended complaint, Stewart, who lived in a three-story townhouse, was diagnosed in 2006 with moderate to severe spinal stenosis.[1] After her doctors recommended she move into a single story residence to minimize the pain caused by walking up stairs, Stewart located a buyer, Calisse Colson. Because Stewart's home was part of a development financed by the Community Redevelopment Agency of the City of Los Angeles (CRA), she was only permitted to sell the home to a buyer meeting low and moderate income guidelines established by the CRA. After Colson was approved by the CRA, escrow was opened; and Stewart moved into a more suitable residence anticipating the sale would be completed.

To finance the purchase of Stewart's residence, Colson applied for a loan from CalHFA, a state agency that offers low-interest-rate loans to first-time, low-income home buyers who meet certain criteria.[2] In May 2007 Stewart learned Colson's application for

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1 We accept as true all facts properly pleaded in Stewart's second amended complaint to determine whether the demurrer was properly sustained. (*Chang v. Lederman* (2009) 172 Cal.App.4th 67, 72, fn. 1; *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 173, fn. 1.) Additionally, we consider information judicially noticed by the trial court in support of CalHFA's demurrer to Stewart's second amended complaint. (See Code Civ. Proc., § 430.30, subd. (a); *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20.)

2 "The California Housing Finance Agency is located in the Business, Transportation and Housing Agency [citation], and is intended to 'meet the housing needs of persons and families of low or moderate income' by facilitating the growth of housing stock. [Citation.] As summarized by our Supreme Court: 'In furtherance of this

a loan to purchase her property had not been approved, but Colson was approved for a loan to purchase a more expensive home. The grounds for the denial were not specified. Stewart repeatedly requested an explanation, but was ignored until June 24, 2009 when CalHFA employee Novoa-Castillo called her and said, "I don't talk to you people." Stewart, who is an African American, understood "'you people' is used as a metaphor for 'you Black people.'"

On September 28, 2009 Stewart received a letter from CalHFA explaining the loan had been denied because of the CRA's resale restriction on the property. The letter stated, "CalHFA's first mortgages are generally funded by the proceeds of tax-exempt bonds, the use of which are limited by federal law as well as CalHFA prudent lending rules. While the use of such bonds helps CalHFA to offer lower rates to first time homebuyers, federal law sets very strict limits on how the bond fund can be used. Among these limits are strict rules on local programs with resale restrictions. As a result, all local programs must meet the federal and CalHFA rules and be pre-approved by Cal-HFA before they can be used in conjunction with a CalHFA loan. [¶] The 1593 West Jefferson Boulevard resale restriction was not approved by CalHFA, so no CalHFA loan may be made to fund the purchase of a home subject to them. Therefore, CalHFA was not able to finance the purchase of your home, although funding from other financing sources may be possible."

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purpose, the Agency is authorized to issue revenue bonds . . . . Proceeds of the bonds are to be made available to "housing sponsors" (described . . . as various types of private developers and local public entities) in the form of development loans, construction loans, mortgage loans (for new construction and rehabilitation) and advances in anticipation of such loans, to construct, develop and acquire housing developments [citations]. In addition, bond proceeds . . . may be used either to purchase loans from qualified mortgage lenders [citations] or to lend funds to qualified mortgage lenders on the condition that they make such loans [citations].' [Citation.] . . . The agency administers the Home Purchase Assistance Fund, which is funded by a continuing appropriation." (*Service Employees Internat. Union, Local 1000 v. Brown* (2011) 197 Cal.App.4th 252, 271.)

2. *The Government Claim*

On March 6, 2010 Stewart filed a government claim form with the California Victim Compensation and Claims Board (Claims Board) seeking $3 million and explaining she was the "victim of unlawful, unfair, and fraudulent business practices in violation of Business and Professions Code 17200." Describing "the specific damage or injury" as the form required, Stewart stated, "Michelle Novoa-Castillo failed to disclose all information in the memorandum dated May 6, 1994; subject subordinate financing and resale controls." Explaining the "circumstances that led to the damage or injury," Stewart stated, "Letter dated September 28, 2009 stated that the property located at 1593 W. Jefferson [Blvd.] resale restriction was not approved by CalHFA, so no CalHFA loan may be made to fund the purchase of a home subject to them." Explaining "why [Stewart] believe[d] the state is responsible for the damage or injury," Stewart wrote, "I found a buyer that met the guidelines for eligibility as set forth by CalHFA. Michelle, a state employee, failed to communicate with Community Redevelopment Agency (LACRA). LACRA did approve a buyer for 1543 W. Jefferson [Blvd.]"

Stewart attached a number of documents to her claim form, including a page from an unrelated form that described her claim in more detail. It stated, "June 24, 2009 I, Mary Stewart, received a call from Michelle Novoa-Castillo . . . . Ms. Novoa-Castillo stated she had no information as to why my property . . . didn't sell. She then directed me to Mat Cullahan at Civic Center Home Realty. At this time Michelle was in violation of Government Code 6250-6270. She also made a negative and very unprofessional remark in reference to the fax I sent . . . on October 2, 2008 . . . requesting information as to why my property wasn't approved. Since the loan was wrongly denied for my property, I have suffered both financially and physically. Being diagnosed with spinal stenosis, it's very difficult living in a tri-level home."

In a letter dated April 19, 2010 the Claims Board notified Stewart it had rejected her claim. The letter included a "Warning," stating, "Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim."

3. *The Initial and First Amended Complaints*

On October 14, 2010 Stewart, representing herself, filed a lawsuit against CalHFA on the Judicial Council's optional complaint form, purporting to allege causes of action for "intentional tort," "violation of civil rights" under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940 et seq.) and "violation of constitutional rights." The complaint alleged CalHFA "negligently and in bad faith, chose to ignore [Stewart's] request for information as of the grounds under which her borrower was denied financing." Novoa-Castillo was not named as a defendant, and the complaint was apparently never served.

On December 9, 2010 Stewart filed a first amended complaint, again against only CalHFA, asserting causes of action for violation of civil rights, violation of her state and federal constitutional rights and intentional infliction of emotional distress. The amended complaint alleged CalHFA wrongfully denied Stewart the opportunity to sell her property to a qualified buyer and failed to provide her or Colson with a written notice setting forth the grounds for denial of the loan assistance. The amended complaint further alleged Novoa-Castillo's comment "I don't talk to you people," was unprofessional, rude and discriminatory and CalHFA's "actions in response to [Stewart's] pre-approved buyer[] was discriminatory because of [Stewart's] sex and race origin."

4. *The Trial Court's Ruling on CalHFA's Demurrer to the First Amended Complaint*

CalHFA demurred to the first amended complaint, contending in part Stewart's causes of action were barred by the statute of limitations, varied from the claims set forth in her government claim and failed to allege facts sufficient to state a cause of action. The trial court sustained the demurrer without leave to amend as to the first cause of action for violation of FEHA, finding it time-barred, overruled the demurrer to the second cause of action for violation of constitutional rights and sustained the demurrer with leave to amend as to the third cause of action for intentional infliction of emotional distress "on the grounds that [Stewart] fails to plead a statute which allows her [to] state such a claim against a public entity and on the grounds that the acts complained of in the complaint do

not rise to the level necessary to support a claim for intentional infliction of emotional distress."

5. *Stewart's Attempt To Amend the Complaint by Filing a Memorandum*

On April 13, 2011 Stewart filed a memorandum captioned "Amendment to Complaint 3rd Cause of Action" in which she asserted CalHFA had provided loan assistance to properties with the same resale restrictions as on her property, thus demonstrating the denial of assistance to her buyer was due to misfeasance and breach of duty and constituted interference with Stewart's contractual relations and prospective economic advantage. As reflected in the minute order from the case management conference on April 28, 2011, the trial court informed Stewart "the Amendment to Complaint . . . is not a complaint. [Stewart] is encouraged to seek legal counsel or go to the law library."

6. *The Trial Court's Ruling on CalHFA's Demurrer to the Second Amended Complaint*

On May 17, 2011 Stewart filed an amendment substituting Novoa-Castillo for Doe 1 and a second amended complaint asserting a cause of action for violation of her state constitutional rights against both CalHFA and Novoa-Castillo. Although the newly amended complaint did not specify the constitutional provision purportedly violated, it alleged, "By engaging in the conduct described above, [CalHFA and Novoa-Castillo] directly and indirectly violated [Stewart's] State Constitutional laws by prohibiting against restrictions on entry into business trade based on race, sexual gender, and demographic information." The amended complaint also asserted a cause of action for intentional infliction of emotional distress only against Novoa-Castillo.

The trial court sustained CalHFA's demurrer, finding the government claim Stewart had filed, which asserted only that Novoa-Castillo had "made a negative and very unprofessional remark," did not sufficiently notify CalHFA that Stewart had suffered racial discrimination in violation of her constitutional rights, "such that [CalHFA] was given the opportunity to investigate such serious allegations." The court also granted Novoa-Castillo's demurrer, finding the first cause of action for violation of constitutional

rights could not be maintained because the same claim against CalHFA had failed and the second cause of action for intentional infliction of emotional distress could not be maintained because the government claim form was insufficient and the alleged conduct was not extreme and outrageous as a matter of law.

DISCUSSION

1. *Standard of Review*

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We may also consider matters that have been judicially noticed. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; see *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) We give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not "assume the truth of contentions, deductions or conclusions of law." (*Aubry*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; see *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20 [demurrer tests sufficiency of complaint based on facts included in the complaint, those subject to judicial notice and those conceded by plaintiffs].) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

2. *Governing Legal Principles*

The Government Claims Act (Gov. Code, § 810 et seq.)[3] "establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 945.4.)" (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237.) This claim

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3 Statutory references are to the Government Code unless otherwise indicated.

presentation prerequisite must also be satisfied before a plaintiff may bring suit against a public employee for injury resulting from an act or omission in the scope of employment unless the plaintiff pleads or proves he or she did not know or have reason to know within the period for presentation that the injury was caused by a public employee. (See *Watson v. State of California* (1993) 21 Cal.App.4th 836, 843-844 ["[i]t is well settled that a government claim must be filed with the public entity before a tort action is brought against the public entity or public employee"]; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 767 ["cause of action against public employee acting in course and scope of employment is barred if action against employing entity is barred"]; *Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 613 ["one who sues a public employee on the basis of acts or omissions in the scope of the defendant's employment [must] have filed a claim against the *public-entity employer* pursuant to the procedure for claims against public entities"]; see also §§ 950.2, 950.4 [excusing failure to timely present claim].) Section 910 requires the claim state the "date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted" and provide "[a] general description of the . . . injury, damage or loss incurred so far as it may be known at the time of presentation of the claim."

"The purpose of these statutes is 'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.' [Citation.] Consequently, a claim need not contain the detail and specificity required of a pleading, but need only 'fairly describe what [the] entity is alleged to have done.' [Citations.] As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions [citation], the claims statute 'should not be applied to snare the unwary where its purpose has been satisfied.'" (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446 (*Stockett*).) ""'If a plaintiff relies on more than one theory of recovery against the [governmental agency], each cause of action must have been reflected in a timely claim."'" (*Fall River Joint Unified School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431, 434.) Additionally,

"the factual circumstances set forth in the claim must correspond with the facts alleged in the complaint." (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.)

3. *The Trial Court Properly Sustained the Demurrers Without Leave To Amend*

As a threshold matter, Stewart's brief on appeal does not identify any legally cognizable error in the trial court's order. Instead, Stewart essentially repeats verbatim the content of her trial court memorandum captioned "Amendment to Complain 3rd Cause of Action," which the trial court had properly informed Stewart was not a proper pleading. The subsequently filed second amended complaint does not include any of the purported facts set forth in Stewart's memorandum regarding loans CalHFA may have made to similarly resale-restricted properties, nor does it attempt to assert a claim for interference with contractual relations or prospective economic advantage. Thus, Stewart's brief on appeal fails to address any possible error in the trial court's ruling. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [cardinal rule of appellate review that judgment or order of trial court is presumed correct and prejudicial error must be shown]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"]; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 [not proper function of Court of Appeal to serve as "backup appellate counsel"].) We acknowledge a self-represented litigant's understanding of the rules on appeal are, as a practical matter, more limited than an experienced appellate attorney's. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing. However, when, as here, that apparent lack of understanding results in our inability to conduct a meaningful review of the trial court's decision, we cannot ignore the fundamental rules of appellate practice. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

Moreover, Stewart cannot assert causes of action in a lawsuit based on facts that were not presented in her government claim. (See *Stockett, supra*, 34 Cal.4th at p. 447 ["[i]f the claim is rejected and the plaintiff ultimately files a complaint against the public

entity, the facts underlying each cause of action in the complaint must have been fairly reflected in a timely claim"]; *Munoz v. State of California*, *supra*, 33 Cal.App.4th at p. 1776.) Stewart's claim before the Claims Board made no mention of any racially discriminatory comments, let alone an assertion that racial animus was the basis for the loan denial by CalHFA. It stated only that Novoa-Castillo had made a "negative and very unprofessional remark in reference to the fax I sent . . . requesting information as to why my property wasn't approved." Thus, neither Stewart's cause of action for violation of constitutional rights against CalHFA nor her two causes of action against Novoa-Castillo for violation of constitutional rights and intentional infliction of emotional distress may be maintained:[4] Both claims are predicated on her assertion the loan to Colson was wrongfully denied because of Stewart's race and the purported impact of Novoa-Castillo's remark on Stewart.

DISPOSITION

The judgment is affirmed. CalHFA and Novoa-Castillo are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.

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4 Because Stewart identifies Novoa-Castillo in her claim, there is no question the exception in section 950.4 excusing timely filing of a claim before an action against a public employee can be maintained is inapplicable.