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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

MILLY GONZALEZ, Plaintiff and Appellant, v. 15115-15125 VICTORY BLVD., LLC, et al., Defendants and Respondents.	B231680 (Los Angeles County Super. Ct. No. BC426716)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mel Red Recana, Judge. Affirmed.

Law Offices of Odion Leslie Okojie, Odion L. Okojie and David Iyalomhe, for Plaintiff and Appellant Milly Gonzalez.

Stone & Hiles, Frank L. Kurasz and Scott D. Zonder, for Defendant and Respondent 15115-15125 Victory Blvd., LLC.

Friedenthal, Heffernan & Klein, Daniel R. Friedenthal and Jay D. Brown, for Defendant and Respondent Cirrus Asset Management, Inc.

Rosa Gonzalez and her daughter, appellant Milly Gonzalez (collectively plaintiffs),[1] filed suit against the owner of Rosa's apartment complex, 15115-15125 Victory Blvd., LLC, and Cirrus Asset Management, Inc., which manages the complex (collectively defendants). Plaintiffs' complaint alleges defendants discriminated against them because of Rosa's disability, in violation of state and federal laws. Defendants demurred to the complaint. The trial court largely overruled the demurrers to Rosa's claims but sustained the demurrers to appellant's claims, without leave to amend. Appellant challenges the trial court ruling. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

"Because this appeal is from a judgment sustaining a demurrer without leave to amend, we state the facts as alleged in [the] complaint without passing on their veracity. [Citation.]" (*R.S. v. PacifiCare Life & Health Ins. Co.* (2011) 194 Cal.App.4th 192, 195.) " ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.]" ' " (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

Rosa was a tenant at 15125 Victory Boulevard in Van Nuys. Rosa has a disability; she has no hearing in her left ear and "suffers from a lack of mobility and balance which . . . severely limits and affects her ability to walk, work, or take care of herself." Appellant provides daily care and assistance for Rosa.

Because of Rosa's disability, plaintiffs repeatedly asked defendants to relocate Rosa to an available ground floor apartment unit. Defendants refused. Plaintiffs also repeatedly requested that defendants direct communications about Rosa's tenancy to appellant, to accommodate Rosa's hearing difficulties. Defendants refused. Appellant went to the apartment complex every day to care for Rosa. Although defendants assigned Rosa a parking space directly below her apartment unit, they refused to allow appellant to park in the space. Appellant was forced to park in front of the property, which was

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[1] To avoid confusion, we will refer to Rosa Gonzalez as "Rosa" and to Milly Gonzalez as "appellant," when identifying plaintiffs individually.

further away from Rosa's apartment. The complaint alleges that due to Rosa's difficulty walking, defendants' refusal to allow appellant to park in the space caused Rosa humiliation, pain, and suffering.[2] Defendants also refused to provide a properly functioning heater or air conditioning system in Rosa's apartment. The unit was not properly ventilated. The complaint alleges that due to these defects, Rosa slipped and fell in the bathroom, sustaining injuries. After plaintiffs complained about conditions in Rosa's apartment and defendants' refusal to provide her reasonable accommodations, defendants threatened to evict Rosa, even though she had paid rent in accordance with her rental agreement.

The complaint asserts five causes of action: denial of a reasonable accommodation in violation of the California Fair Employment and Housing Act (FEHA; Gov. Code, § 12955, et seq.; count 1); disability discrimination in violation of the Unruh Civil Rights Act (Civ. Code, § 51, et seq.; count 2); disability discrimination in violation of Title VIII of the Civil Rights Act of 1968 (42 U.S.C., § 3601, et seq., known as the Fair Housing Act (FHA; count 3); breach of the covenant of quiet enjoyment (count 4); and intentional infliction of emotional distress (count 5).

Defendants demurred to the complaint. With respect to appellant, defendants argued the complaint failed to state a claim, appellant did not have standing, and the complaint did not allege facts sufficient to state a claim for intentional infliction of emotional distress. As to Rosa, the trial court overruled the demurrers to counts 1, 2, 3

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[2] The complaint states: "At all relevant times to this action when PLAINTIFF MILLY GONZALEZ comes to the apartment complex to provide care for PLAINTIFF ROSA GONZALEZ at the SUBJECT PROPERTY, DEFENDANTS would refused [*sic*] to allow PLAINTIFF MILLY GONZALEZ use [*sic*] the parking space which has been assigned to PLAINTIFF ROSA GONZALEZ since 2006, and PLAINTIFF MILLY GONZALEZ will therefore be forced to park in front of the SUBJECT PROPERTY rather than allow PLAINTIFF ROSA GONZALEZ use [*sic*] her assigned space which is right below PLAINTIFF's apartment unit. As a result of Plaintiff ROSA GONZALEZ's difficulties walking, the refusal to allow her use [*sic*] the parking space forces Plaintiffs to park further away from the apartment complex thereby causing her to endure unnecessary humiliation, pain, and suffering." It appears that "her" in the last sentence of the paragraph refers to Rosa.

and 5. It sustained the demurrers to count 4 (quiet enjoyment) with leave to amend. However, as to appellant, the court sustained the demurrers to all counts, without leave to amend. Rosa subsequently settled her claims against defendants. The trial court dismissed the complaint and entered a judgment. Appellant timely appealed.

DISCUSSION

I. The Trial Court Properly Sustained the Demurrers to Counts 1, 3, and 5

"In reviewing the sufficiency of a complaint against a demurrer, we 'treat[] the demurrer as admitting all material facts properly pleaded,' but we do not 'assume the truth of contentions, deductions or conclusions of law.' [Citation.] We liberally construe the pleading to achieve substantial justice between the parties, giving the complaint a reasonable interpretation and reading the allegations in context. [Citations.] When a demurrer is sustained, we must determine de novo whether the complaint alleges facts sufficient to state a cause of action under any legal theory. [Citation.]" (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 692-693 (*Martorana*).)

"[W]hen a demurrer is sustained without leave to amend, we also must determine whether there is a reasonable possibility that the defect can be cured by amendment. [Citation.] If it can be cured, the trial court has abused its discretion in sustaining the demurrer without leave to amend and we reverse. [Citation.] If it cannot be cured, there has been no abuse of discretion and we affirm. [Citation.] The burden of showing that a reasonable possibility exists that the complaint can be cured by amendment rests squarely with the plaintiff. [Citation.]" (*Martorana*, *supra*, 175 Cal.App.4th at p. 693.)

A. Counts 1 and 3: The Complaint Failed to Allege Facts Showing Appellant Had Standing to Bring FHA or FEHA Claims

Appellant challenges only the dismissal of counts 1, 3, and 5 of the complaint. Count 1 alleges defendants violated the FEHA. Count 3 alleges defendants violated the FHA. The complaint asserts defendants violated both statutes by denying Rosa reasonable accommodations, and by discriminating on the basis of disability. Defendants contend appellant failed to state a claim under either statute because she does not have a disability, and the complaint does not allege facts to support a claim that defendants

discriminated against her because she is associated with a person with a disability. We conclude the complaint does not allege facts sufficient to establish appellant has standing under the FEHA or the FHA.

Both the FEHA and the FHA prohibit discrimination in housing based on disability. (Gov. Code, § 12955, subdivision (a)[3]; 42 U.S.C. § 3604.) Under both laws, "discrimination" means disparate treatment of persons with disabilities, as well as a refusal to make reasonable accommodations in rules, policies, practices, or services for a person with a disability.[4] (§ 12927, subd. (c)(1); 42 U.S.C. § 3604, subd. (f)(3).) Both statutes also forbid discrimination against a person because he or she is "associated with" a person with a disability. (§ 12955, subd. (m); 42 U.S.C. § 3604, subd. (f)(2).)

The central issue before us is whether appellant has standing to bring claims under the FEHA or the FHA. "In general terms, in order to have standing, the plaintiff must be able to allege injury—that is, some 'invasion of the plaintiff's legally protected interests.' [Citations.] [¶] Standing rules for actions based upon statute may vary according to the intent of the Legislature and the purpose of the enactment. [Citations.]" (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175.) The FEHA and the FHA provide that an "aggrieved person" may bring a civil action to challenge a discriminatory housing practice. (§ 12989.1; 42 U.S.C. § 3613, subd. (a)(1)(A).) "Aggrieved person" is defined as any person who claims to have been injured by a discriminatory housing practice, or believes he or she will be injured by a discriminatory housing practice that is about to occur. (§ 12927, subd. (g); 42 U.S.C. 3602, subd. (i).)

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3 All further statutory references are to the Government Code, unless otherwise indicated.

4 Both statutes provide that discrimination includes "refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." (§ 12927, subd. (c)(1); 42 U.S.C. § 3604, subd. (f)(3)(B).)

Under the FHA, standing to bring suit as an aggrieved person is not limited to "direct victims" of housing discrimination.[5] In *Trafficante v. Metropolitan Life Ins.* (1972) 409 U.S. 205 (*Trafficante*), and *Gladstone, Realtors v. Village of Bellwood* (1979) 441 U.S. 91 (*Gladstone*), the Supreme Court concluded the FHA was to be interpreted as broadly as permissible under Article III of the United States Constitution. (*Gladstone*, at p. 109; *Trafficante*, at p. 209.) Thus, a plaintiff has standing under the FHA when the defendant's conduct has caused the plaintiff a " 'distinct and palpable injury.' " (*Gladstone*, at p. 114.) For example, in *Gladstone*, the plaintiffs were homeowners challenging the defendant realtors' racial "steering" practices. (*Gladstone*, at pp. 94-95.) The plaintiffs claimed the defendants' practices were turning their integrated neighborhood into a segregated one. (*Id.* at pp. 95, 110.) The plaintiffs alleged they suffered a loss of social and professional benefits they would have gained from interracial association. They also alleged economic injury due to a diminution in value of their homes. (*Id.* at p. 115.) The court concluded these allegations were sufficient to provide Article III—and therefore FHA—standing. (*Ibid*.) Similarly, in *Trafficante*, the plaintiffs were white residents in an apartment complex who alleged the owner discriminated against nonwhite prospective tenants. (*Trafficante*, at pp. 207-208.) The plaintiffs' alleged injuries were the lost benefits of living in an integrated community. (*Id.* at p. 208.)

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[5] Although the parties do not specifically address the issue, we assume for purposes of this opinion that the Supreme Court's analysis of standing under the FHA applies to housing claims under the FEHA. In general, " '[t]he Legislature sought to make the FEHA " ' " 'substantially equivalen[t]' " [citation] to the [FHA] and its amendments [citation] . . . .' [Citations.]" (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1420.) As a result, " '[c]ourts often look to cases construing the FHA, . . . when interpreting FEHA' [citation.].' " (*Ibid.*) In *Sisemore*, the court concluded the Supreme Court's analysis of the standing of an organization to bring suit under the FHA applied to similar claims under the FEHA. (*Id.* at pp. 1424, 1426.) We also note appellant does not contend that standing under the FEHA is broader than the Article III standards federal courts have applied to the FHA.

Appellant relies on the reasoning of these cases to argue she has standing to bring housing discrimination claims. But even under the broad standard applied to the FHA, appellant's complaint fails to allege facts demonstrating she has standing in this case. *Trafficante* and its progeny do not stand for the proposition that a plaintiff need only witness and be upset by discrimination against another person to have standing under the FHA. Instead, in *Trafficante* and later cases, courts have interpreted "aggrieved person" to mean one who has suffered some injury himself, such as loss of interracial association, or a denial of benefits to the *plaintiff* because of the defendant's discrimination against another person. (See *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363 [loss of the benefits arising out of interracial association]; *Whisby-Myers v. Kiekenapp* (N.D. Ill. 2003) 293 F.Supp.2d 845, 853 [family members had standing where white neighbor attacked African American wife/mother because of her race; attack was reasonably construed as intended to drive the entire family out of neighborhood]; *Halet v. Wend Inv. Co.* (9th Cir. 1982) 672 F.2d 1305, 1309 [white plaintiff had standing to challenge policy infringing on rights of minorities because he was also denied an apartment because of the policy].)

Appellant's complaint alleges no facts indicating she suffered a distinct and palpable injury, rather than an abstract or conjectural one. (*Maya v. Centex Corp.* (9th Circ. 2011) 658 F.3d 1060, 1069.) The complaint describes only Rosa's legally protectable interests, discrimination directed at Rosa, and injuries Rosa suffered. Rosa was the tenant at the apartment complex. Defendants refused to relocate her to a ground floor apartment. Defendants refused to provide proper ventilation, heating, or cooling to Rosa's apartment. This was a problem, according to the complaint, because of Rosa's medical requirements, and it caused injury to Rosa when it led to her slip and fall. Defendants threatened to evict Rosa. The complaint does not identify any injuries appellant suffered as a result of discrimination directed at Rosa.

Even the two allegations specifically involving appellant describe only injury to Rosa. First, appellant contends defendants refused to honor plaintiffs' request that they communicate with appellant about Rosa's tenancy, due to her disability. But the complaint states no facts indicating that appellant, rather than Rosa, was injured by defendants' refusal. Similarly, the complaint alleges defendants refused to allow appellant to park in Rosa's reserved parking space close to her apartment. Rosa was therefore forced to walk further to get to the car. The complaint states no facts indicating appellant suffered an independent injury because she was not allowed to use Rosa's parking space.

At most, the complaint includes only conclusory statements that "plaintiffs" were injured "in their health, strength, and activity . . . including . . . mental pain and anguish"; plaintiffs incurred medical expenses and lost earnings; and plaintiffs suffered reputational harm. These allegations do not distinguish appellant from Rosa or allege any supporting facts showing an invasion of *appellant's* legally protected interests. (*Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537 [conclusory allegations are not enough to withstand demurrer].) This is insufficient to demonstrate appellant has standing. (See *Smith v. Frye* (4th Cir. 2007) 488 F.3d 263, 273-274 [adult son could not collect for emotional damages he suffered as a result of the defendant's politically motivated discharge of mother; no Article III standing].)

Appellant further contends she may bring a claim because she is associated with a person with a disability. We agree that the complaint includes facts sufficient to establish appellant is associated with a person who has a disability. (*Winchell v. English* (1976) 62 Cal.App.3d 125, 127-128.) But appellant was still required to allege facts in the complaint showing she suffered a distinct and palpable injury to state a claim under the FHA or the FEHA. The complaint does not allege defendants subjected *appellant* to unlawful conduct because of her association with Rosa. It does not state facts showing appellant was injured as a result of defendants' conduct related to her association with Rosa. Appellant was not a tenant or resident at the complex, thus defendants' actions directed at Rosa did not deprive appellant of equal use of facilities or services to which

she had a legal right. To the extent appellant was prohibited from using a service—Rosa's parking space—defendants' actions infringed on Rosa's rights, and indeed, Rosa suffered the resulting injuries because she had difficulty walking and was forced to walk to a more distant parking spot. We are aware of no legal authority for the proposition that a plaintiff associated with a person with a disability may bring a claim under the FHA or the FEHA challenging only the defendant's unlawful treatment of the person with the disability, and based on injuries only the disabled person suffered.[6]

Simply put, plaintiffs' complaint alleges no facts demonstrating appellant suffered a cognizable injury under the FEHA or the FHA as a result of defendants' actions. Moreover, appellant has presented no additional facts or legal argument indicating she could amend the complaint to show she suffered a distinct or palpable injury as a result of defendants' alleged unlawful conduct. The trial court properly sustained the demurrers to counts 1 and 3 without leave to amend.

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6 Indeed, courts assessing claims of associational discrimination under other federal statutes, other California statutes, and other provisions of the FEHA, have concluded the plaintiff herself must have suffered an injury because of the association to have standing or state a claim. (See *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 878 [white employee could not prevail on race-based hostile environment claim absent evidence he was subjected to harassing comments because of his association with or advocacy on behalf of African Americans]; *Baaske v. City of Rolling Meadows* (N.D. Ill 2002) 191 F.Supp.2d 1009, 1016 [courts allow non-disabled plaintiffs to sue under Title II of the Americans with Disabilities Act (ADA) so long as the plaintiffs allege: (1) a relationship or association with a disabled person; and (2) " 'some specific, separate, and direct injury' that the plaintiff has suffered as a result of his association with the disabled individual."]; *Glass v. Hillsboro School Dist. 1J* (D.Or. 2001) 142 F.Supp.2d 1286, 1289-1292; *Micek v. City of Chicago* (N.D. Ill., Sept. 30, 1999, No. 98C6757) 1999 WL 966970 [plaintiff whose wife and son had disabilities did not state a claim for discrimination based on association under Title II of the ADA; plaintiff challenged his employer-sponsored insurance plan's denial of benefits to wife and son]; *Kotev v. First Colony Life Ins. Co.* (C.D. Cal. 1996) 927 F.Supp. 1316, 1320 [discrimination based on association with person in protected class violates the Unruh Act; plaintiff alleged he was arbitrarily denied insurance based on his association with a person with a disability].)

B. Count 5: Intentional Infliction of Emotional Distress

We also find the trial court properly sustained the demurrers to appellant's claim for intentional infliction of emotional distress. The elements of a claim for intentional infliction of emotional distress are: " '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' [Citation.]" (*Ess v. Eskaton Properties, Inc.* (2002) 97 Cal.App.4th 120, 129 (*Ess*).) " 'It is not enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.' [Citation.] . . . . In circumstances in which a plaintiff seeks to recover for emotional distress suffered as the result of conduct directed primarily at another, recovery--to the extent it has been allowed at all-- 'has been limited to " 'the most extreme cases of violent attack, where there is some especial likelihood of fright or shock.' " ' [Citations.]" (*Id.* at p. 130*; Christensen v. Superior Court* (1991) 54 Cal.3d 868 (*Christensen*) [law limits intentional infliction claims to " 'egregious conduct *toward plaintiff* proximately caused by defendant,' " the only exception is when the defendant is aware of the plaintiff but acts with reckless disregard of the plaintiff and the likelihood the conduct will cause the plaintiff severe emotional distress].)

Appellant's complaint generally concludes "defendants' conduct was deliberate, intentional, outrageous and malicious, and done for purposes of causing plaintiffs to suffer humiliation, mental anguish, and severe emotional and physical distress." But the complaint does not allege any facts to show defendants directed intentional and outrageous conduct at appellant. Further, even if we assume some of defendants' alleged acts occurred in appellant's presence—such as a rejection of the request to relocate Rosa, or the refusal to allow appellant to park in Rosa's parking space—those alleged acts do not rise to the level of extreme, outrageous conduct sufficient to state an intentional infliction of emotional distress claim as to appellant. " 'In evaluating whether the defendant's conduct was outrageous, it is "not . . . enough that the defendant has acted

with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." ' [Citation.]" (*McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1517 (*McMahon*).)

As appellant's claim is based on acts not directed primarily at her, any challenged conduct needed to be a "most extreme case of violent attack where there is some special likelihood of fright or shock" to be actionable. (*Christensen, supra,* 54 Cal.3d at p. 905; see also *Ledger v. Tippitt* (1985) 164 Cal.App.3d 625, 642, disapproved of on another ground by *Elden v. Sheldon* (1988) 46 Cal.3d 267, 272 [daughter who became embarrassed when she watched one of her parents involved in a fight with a third person could not recover for intentional infliction of emotional distress].) The complaint alleges only that the defendants denied requests for accommodations, failed to provide certain services, and threatened to evict Rosa. The complaint does not allege any acts rising to the requisite level of extreme conduct occurred in appellant's presence. (*Christensen, supra,* 54 Cal.3d at pp. 905-906; *Ess, supra,* 97 Cal.App.4th at pp. 130-131.) The trial court properly sustained defendants' demurrer to appellant's intentional infliction of emotional distress claim. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494 [demurrer to intentional infliction claim may be sustained where alleged conduct is not sufficiently outrageous].)

Appellant did not request leave to amend her complaint in the trial court or on appeal. "The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained

the demurrer without leave to amend." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44; see also *McMahon, supra*, 176 Cal.App.4th at p. 1517.)

DISPOSITION

The trial court judgment is affirmed. Defendants shall recover their costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.