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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

GEORGE CARR et al., Plaintiffs and Appellants, v. CHICAGO TITLE INSURANCE CO., et al., Defendants and Respondents.	B284356 (Los Angeles County Super. Ct. No. NC060528)

APPEAL from judgment and order of the Superior Court of Los Angeles County, Kevin Ross, Judge. Affirmed.

Law Offices Douglas Joseph Rosner, Douglas J. Rosner, for Plaintiffs and Appellants.

Fidelity National Law Group, Donald E. Leonhardt, for Defendants and Respondents.

INTRODUCTION

Plaintiff and appellant George Carr, by and through his guardian ad litem Denise Klein, appeals from a judgment entered in favor of defendants and respondents Chicago Title Company, Chicago Title Insurance Company, and Tony Taranto (collectively, Chicago). The court entered judgment after sustaining Chicago's demurrer without leave to amend.

Carr contends the allegations of his second amended complaint (complaint) adequately state a cause of action against Chicago for financial elder abuse under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.)[1] because Chicago assisted in the taking of Carr's property, specifically his home. Chicago contends the facts as alleged do not state a claim for elder abuse because title insurance law does not permit tort claims against a title company for preparing a preliminary report or issuing a title policy.[2] We conclude the allegations of Carr's

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Both preliminary reports and title policies are defined in the California Insurance Code. Preliminary reports are "reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein." (Ins. Code, § 12340.11). A title policy is "any written instrument

complaint do not state a cause of action against Chicago, and we affirm the judgment of dismissal.[3]

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the relevant facts as alleged from Carr's complaint,[4] together with matters subject to judicial notice. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

The individuals involved

Carr was over 65 years old, and the real property at 3962 Cedar Avenue in Long Beach, California (the Home)

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or contract by means of which title insurance liability is assumed." (*Id.*, § 12340.2.)

[3] Carr did not seek leave to file an amended complaint, so we need not consider whether the court should have granted leave to amend. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 ["plaintiff has the burden of proving that an amendment would cure the defect"].)

[4] We limit our factual recitation to the allegations against Chicago. The complaint names numerous defendants in addition to Chicago, including, among others, Center Street Lending MP III, LLC, United National LLC, and Abel Galvez. The complaint includes four causes of action, but only the second cause of action names Chicago. None of the other defendants are parties to this appeal.

was his principal residence. Before 2013, there were no liens or encumbrances on the Home.

Defendant Galvez[5] is known by a number of aliases, including Abel Galvez, Art A. Galvez, Aureliano A. Galvez, and Abel A. Galvez-Carrillo. Around 2005, Galvez was convicted and imprisoned for his participation in a real estate scheme in Riverside County involving 25 properties with a combined value over $23 million. The scheme involved transferring ownership of the properties to various straw buyers to facilitate taking the property from the original owners. Chicago had knowledge of Galvez's involvement in the Riverside scheme because it produced documents in response to a criminal subpoena and paid a claim based on the criminal acts of a person with Galvez's "exact name and method of operation." When Galvez was released from prison, he moved in with Carr.

Carr transfers title for the Home from himself to an entity named United National LLC

In 2011, Galvez created a "Certificate of Organization" for defendant United National, LLC (United National), which "became the platform for the Real Property Scam which resulted in the appropriation and/or taking of Carr's [Home]."

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[5] From the record, it is unclear whether Galvez was served with the complaint or appeared before the trial court.

On January 15, 2013, Carr signed a grant deed transferring his interest in the Home to United National.[6] The grant deed stated that the grant was made in exchange for consideration, but also stated, "The grantors and the grantees in this conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property [citation.]" Other than alleging Galvez had Carr sign the deed, the complaint does not provide any information about Carr's intention or state of mind at the time, or whether Carr ever owned any interest in United National. Despite the language of the deed, the complaint alleges Carr received no consideration for the transfer to United National. The deed was recorded on March 15, 2013.

Galvez drains the equity from Carr's home, leading to foreclosure

In late April 2013, Galvez contacted a lender about a refinance loan, and the lender asked Chicago to prepare a preliminary title report for the refinance. On May 9, 2013, Chicago issued a preliminary report.[7] The report described title to the Home as vested in "[Carr], a single man, subject to Item No. 8 of schedule B." Item No. 8 described the grant

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[6] The grant deed is attached as an exhibit to the complaint.

[7] No preliminary report was attached to the complaint, and it does not appear in the record on appeal.

deed transferring ownership of the home from Carr to United National, and stated "For insurance purposes, the company is not willing to divest the interest of [Carr] and [United National.] An inquiry of the parties shall be required. In order to complete this report, the Company requires [specified documentation from United National.]" Around May 13, 2013, Galvez, acting as the managing member of United National, a New Mexico Domestic Limited Liability Company, executed an operating and control agreement identifying "Abel A. Galvez" as the sole member with a 100 percent interest, having made an initial capital contribution of $1,000.

Around May 15, 2013, Chicago produced a summary identifying the borrower as Carr and United National, but noting that the "owner name does not match open order sheet requires attention." On June 25, 2013, Chicago issued another preliminary report, still describing title as vested in Carr and including as an exception to coverage Item No. 8 of Schedule B (stating, "the company is not willing to divest the interest of [Carr] and [United National]"). The preliminary report continued to state that Chicago required additional documentation from the parties to complete the report.

Around August 7, 2013, Chicago ran an entity search, limited to Los Angeles, California, for United National. Chicago never ran an entity search that would have discovered that United National did not exist in California, but in New Mexico, wholly owned and controlled by Galvez. Before issuing the title policy, however, Chicago received the

operating and control agreement identifying Galvez as the sole member of the New Mexico entity.

On August 8, 2013, the lender, defendant Center Street Lending MP III, LLC (Center Street), provided escrow instructions identifying Chicago's June 25, 2013 preliminary report, a loan amount of $430,000, the borrower as United National, and the guarantor as Abel A. Galvez. Galvez executed a number of documents in connection with the loan: (1) a promissory note for $430,000 on behalf of United National; (2) a personal guarantee; and (3) a deed of trust giving Center Street a security interest in the Home. On August 16, 2013, Chicago notified the escrow company that its June 25, 2013 report was modified and supplemented to delete Item No. 8. The notification identified Carr as the borrower. Carr never agreed to the loan and never received any of the loan funds.

On August 16, 2013, Chicago caused the deed of trust between Center Street and United National to be recorded. On August 19, 2013, Chicago issued a title insurance policy naming Center Street as the beneficiary. Chicago also provided to the escrow officer a disbursement and other paperwork identifying Carr as the borrower. On that same day, Galvez, not Carr, received the loan proceeds. Around March 2015, the Home was sold subsequent to a foreclosure on the loan, and Carr was evicted.

Carr's complaint and Chicago's demurrer

In his sole cause of action against Chicago, Carr alleges: Chicago committed elder financial abuse in violation of section 15610.30. Chicago had actual or constructive notice of possible unlawful conduct involving an elder because it had notice of the 2013 grant deed from Carr to United National, Galvez's involvement in the prior Riverside scheme, and Galvez's status as the sole member of United National. In light of Chicago's constructive or actual knowledge, Chicago was grossly negligent or reckless in not conducting further investigation of, and not halting, the proposed loan transaction. Chicago knew the loan would be harmful to Carr. Carr's interest in the Home was taken due the gross negligence and recklessness of Chicago. Carr suffered actual damages in the amount of the fair market value of his Home in 2013 (i.e., $800,000), loss of the reasonable rental value of the Home after his eviction in March 2015, treble damages pursuant to Civil Code section 3345, and punitive damages pursuant to Civil Code section 3294.

Chicago filed a demurrer to the complaint, a request for judicial notice, and a motion to strike Carr's request for punitive damages. Following a hearing, the court sustained the demurrer without leave to amend and entered a judgment of dismissal.

DISCUSSION

Neither side disputes that Galvez took property from Carr, and that Carr was harmed by the taking. The question before us is whether Chicago can be held liable for elder abuse because it assisted Galvez in his scheme to defraud Carr. Generally speaking, a party may be held liable for elder abuse for wrongfully taking property from an elder, or assisting another in doing so. The statute defining financial elder abuse does not support imposing liability on the facts alleged in this case. The duties and attendant tort liability of title companies that prepare preliminary reports and issue title policies are limited by statute and case law. Absent additional wrongful conduct not alleged here, Chicago cannot be held liable to Carr for elder abuse for preparing the preliminary report and issuing the title policy insuring Center Street on what was later alleged to be a fraudulent loan.

Standard of review

We apply a de novo standard of review on appeal from an order sustaining a demurrer. "[W]e exercise our independent judgment about whether the complaint states a cause of action as a matter of law. [Citation.] First, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 439 (*Stearn*).)

"We accept as true all properly pleaded material factual allegations of the complaint and other relevant matters that are properly the subject of judicial notice, and we liberally construe all factual allegations of the complaint with a view to substantial justice between the parties." (*Glen Oaks Estates Homeowners Assn. v. Re/Max Premier Properties, Inc.* (2012) 203 Cal.App.4th 913, 919.) "Then we determine whether the complaint states facts sufficient to constitute a cause of action." (*Stearn, supra*, at p. 439.) "We do not, however, assume the truth of contentions, deductions, or conclusions of law. [Citation.]" (*Id.* at p. 440.)

Elder abuse statutes

Elder financial abuse occurs when a person or entity "[t]akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both" or "[a]ssists in taking, secreting, appropriating, obtaining or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both." (§ 15610.30, subd. (a)(1) and (2).)[8] A person or entity is

[8] To keep this discussion concise, our subsequent references to the terms "takes" or "taking" in section 15610, subdivisions (a)(1) and (2) will encompass the statutory terms relating to secreting, appropriating, obtaining and retaining as well. Financial abuse can also occur when a person or entity takes property through undue influence, but

"deemed to have taken . . . property for a wrongful use if, among other things, the person or entity takes . . . the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." (§ 15610.30, subd. (b).) Property is taken when the elder adult "is deprived of any property right, including by means of an agreement . . . regardless of whether the property is held directly or by a representative of an elder or dependent adult." (§ 15610.30, subd. (c).)

An essential element of elder abuse is either an intent to defraud or a wrongful use of the property. (See *Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302, 1315–1316 [lot line adjustment made without valid power of attorney supports a skeletal claim for elder abuse]; *Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 527–528 (*Stebley*) [no valid cause of action without allegation that foreclosing lender took property for a "wrongful use"]; *Paslay v. State Farm General Ins. Co.* (2016) 248 Cal.App.4th 639, 658 [insurer liable for breach of contract for denying coverage to elderly homeowners is not liable for elder abuse because there was a genuine dispute about scope of coverage; "wrongful conduct occurs only when the party who violates the contract actually knows that it is engaging in a harmful breach, or reasonably should be aware of the harmful breach."].) *Stebley* affirmed an order sustaining a demurrer

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that possibility is not relevant to Carr's claims against Chicago. (See, *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 479, quoting Civ. Code, § 1575.)

without leave to amend as to an elder adult's claims for wrongful foreclosure and elder abuse. (*Stebley*, *supra*, at pp. 524–525.) After rejecting the claim for wrongful foreclosure, the appellate court held that the elder abuse claim also failed, concluding that a lender does not engage in financial abuse of an elder by properly exercising its rights under a contract, even though that conduct is financially disadvantageous to an elder. (*Id.* at pp. 527–528.) "'It is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid . . . . [A] commercial lender is privileged to pursue its own economic interests and may properly assert its contractual rights.' [Citation.]" (*Id.* at p. 528.)

Carr has not stated a claim for elder abuse against Chicago because it did not assist Galvez's wrongful conduct

Here, Carr does not plead or contend that Chicago directly took his Home, or that Chicago acted with an intent to defraud or itself made "wrongful use" of his Home under subdivision (a)(1). Rather, Carr contends Chicago committed elder abuse under subdivision (a)(2) by *assisting* Galvez in taking Carr's Home. The elder abuse statutes do not define the term "assists," but "the provision cannot be understood to impose strict liability for assistance in an act of financial abuse." (*Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 744–745 (*Das*) [merely providing ordinary financial services that effectuate financial abuse by a third-

party is not sufficient to show bank assisted the third-party under subdivision (a)(2)].) Rather, liability for assisting financial elder abuse under subdivision (a)(2) of section 15610.30 is coextensive with the common law liability for aiding and abetting an intentional tort. (*Ibid.*) Specifically, one may be liable for aiding and abetting an intentional tort ". . . if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person . . . ." (*Id.* at p. 744 [internal quotation marks and citations omitted]; see also Rest.2d Torts, § 876.)

Carr argues he has a valid claim for elder abuse because he has alleged facts showing Chicago failed to conduct further inquiry into ownership of the Home or Galvez's role in the loan transaction and, as a result, it failed to halt Galvez's scheme to drain equity from the Home. Carr highlights various instances when Chicago's investigation and preparation of its preliminary report raised alleged "red flags" that he contends warranted further inquiry, as additional investigation would have alerted Chicago to Galvez's fraudulent activity. Carr argues that Chicago acted recklessly in issuing a title policy after its preliminary report showed Carr as the 100% owner of the Home. Carr points to a warning from Title Edge, Chicago's failure to do a name search, and its lack of further investigation. He alleges that

Chicago's title policy "permanently sever[ed]" his attachment to his Home. In his reply brief, Carr argues that Chicago's conduct deprived him not only of the Home, but also any equity remaining after the loan was approved.

None of Carr's allegations or arguments make out a case that Chicago assisted Galvez in taking the Home within the meaning of subdivision (a)(2) of section 15610.30. (See *Das, supra,* 186 Cal.App.4th at 744.) Under the allegations of Carr's complaint, Galvez was the primary tortfeasor, whose intentional tort included the wrongful conduct of using Carr's Home as security for a loan payable to Galvez. Carr did not allege Chicago acted in concert with Galvez or that it had any direct contact with Galvez, much less a relationship with him, adequate to support an inference that Chicago knowingly assisted Galvez with carrying out his fraudulent scheme. (See *id.* at pp. 744–745; *Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1145–1146 ["liability for aiding and abetting depends on proof the defendant had actual knowledge of the specific primary wrong the defendant substantially assisted"].)

The only other basis for finding that Chicago assisted in taking Carr's property is if it "[gave] substantial assistance to [Galvez] in accomplishing a tortious result and [Chicago's] own conduct, separately considered, constitute[d] a breach of duty to [Carr]." *(Das*, *supra,* 186 Cal.App.4th at p. 744; Rest.2d Torts, § 876.) However, the statutes and case law governing title insurance establish that Chicago did not owe a separate duty to Carr with respect to Chicago's role

and conduct in the loan at issue here, including any duty to further investigate Galvez's role in the loan transaction.

"Insurance Code sections 12340.10 and 12340.11 leave no room for the existence of a duty of care based on the title company's search of records and issuance of a preliminary report and title insurance policy." (*Siegel v. Fidelity Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 1181, 1193 (*Siegel*).) "Title insurance is a contract for indemnity under which the insurer is obligated to indemnify the insured against losses sustained in the event that a specific contingency, e.g., the discovery of a lien or encumbrance affecting title, occurs. [Citations.]" (*Lawrence v. Chicago Title Ins. Co.* (1987) 192 Cal.App.3d 70, 74.)

Prior to issuing a policy of title insurance, a title insurer typically prepares a preliminary report. A preliminary report is statutorily defined as an "offer[] to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein." (Ins. Code, § 12340.11.) It is "a statement of the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted." (*Ibid.*) "[A] title insurer prepares a preliminary report to limit its own risk—by locating and excluding items from coverage—and not on behalf of any party to a real estate transaction." (*Siegel, supra,* 46 Cal.App.4th at p. 1193.) "'[A]ny title search or examination is performed by the insurer solely for the purpose of seeking to evaluate its underwriting decision in issuing the policy, not for the

benefit of the insured.' [Citation.]" (*Fidelity National Title Ins. Co. v. Miller* (1989) 215 Cal.App.3d 1163, 1175 (*Miller*).) Accordingly, under Insurance Code section 12340.11, "a title insurer cannot be held liable for negligence in connection with a preliminary report . . . ." (*Lee v. Fidelity National Title Ins. Co.* (2010) 188 Cal.App.4th 583, 595–596 (*Lee*) [reviewing effect of statutory limitations on title insurers' liability].)

Nor does a title insurance policy, once issued, impose a duty of care regarding the condition of title on the title insurer toward its own insured, or any third party. "The policy of title insurance . . . does not constitute a representation that the contingency insured against [i.e., the discovery of a lien or encumbrance affecting title] will not occur. [Citations.] Accordingly, when such contingency occurs, no action for negligence or negligent misrepresentation will lie against the insurer based upon the policy of title insurance alone. [Citations.]' [Citation.]" (*Miller*, *supra*, 215 Cal.App.3d at p. 1175.) In enacting [Insurance Code] sections 12340.10 and 12340.11, the Legislature recognized that no reliance should ever be placed on a preliminary report or a policy of title insurance to show the condition of title. [Citations.]" (*Siegel, supra*, 46 Cal.App.4th 1181, 1189–1190, italics added; see also, *Contini v. Western Title Ins. Co.* (1974) 40 Cal.App.3d 536, 545 [the issuer of a title policy is entitled to define the extent of its liability under the policy].)

Carr's allegations imply that Chicago owed him a duty of care to conduct an investigation of Galvez and United National sufficient to protect Carr, and that Chicago breached that duty when it issued a title insurance policy that "severed" his interest. This misconstrues the purpose of title insurance, which is to protect the insured party (here Center Street) through a contract of indemnity, not to offer any protection to the non-insured borrower or landowner (here United National or Carr). (*See Lee, supra,* 188 Cal.App.4th at pp. 596–597.) It was Center Street that sought title insurance, and Chicago provided preliminary reports, followed by a title policy insuring Center Street against the risk that the borrower did not own full legal title to the Home, the real property securing Center Street's loan. While Carr alleges that Chicago's preliminary reports demonstrate its knowledge of Galvez's role in the loan transaction, Carr does not and cannot allege facts demonstrating Chicago had any duty to investigate Galvez's relationship with Carr, to alert Carr about Galvez's scheme, or to stop the loan transaction. Indeed, as the relevant provisions of the Insurance Code make clear, Chicago had no duty even to notify Center Street, much less Carr. While the lack of additional investigation may have increased the risk that Center Street might seek recourse against Chicago for defects in the borrower's title, it does not mean Chicago's actions breached a duty owed to Carr. Nothing in the law supports imposing upon a title insurance company a duty to undertake an investigation to protect the interests of a

borrower or landowner, or be liable to an owner in the chain of title, regardless of that owner's age. (*Das*, *supra,* 186 Cal.App.4th at pp. 744–745.) Absent allegations showing that Chicago owed a duty to Carr, and that Chicago breached that duty, the complaint's allegations of recklessness and gross negligence do not, and cannot, state a legally adequate claim against Chicago for elder abuse.[9]

[9] Carr's reply brief also disputes Chicago's position that it did not know Carr was an elder, insisting that the allegation stating he was over 65 was sufficient to survive demurrer. However, the mere fact that Carr was 65 years old does not establish that Chicago knew Carr's age when it prepared its preliminary report or issued the title policy. Because we conclude Carr has not adequately alleged facts demonstrating that Chicago assisted or engaged in wrongful conduct, we need not decide whether a claim for financial elder abuse based on assisting a wrongdoer must include an allegation that the assisting party knew or should have known that the victim was an elder or dependent adult.

DISPOSITION

The judgment is affirmed. Defendants and respondents Chicago Title Company, Chicago Title Insurance Company, and Tony Taranto are awarded their costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.