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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

MASOUMEH MOHAJER, Plaintiff and Appellant, v. JP MORGAN CHASE BANK, N.A., et al., Defendants and Respondents.	B234645 (Los Angeles County Super. Ct. Nos. BC 421436 and BC 439496)

APPEAL from a judgment (order of dismissal) of the Superior Court for the County of Los Angeles. John Shepherd Wiley, Jr., Judge. Affirmed.

Masoumeh Mohajer, in pro. per., for Plaintiff and Appellant.

AlvaradoSmith, Theodore E. Bacon and Nanette B. Barragan for Defendants and Respondents.

SUMMARY

Plaintiff Masoumeh Mohajer, proceeding in propria persona, sued Deutsche Bank National Trust Company and JP Morgan Chase Bank, N.A., after her home was sold at a nonjudicial foreclosure sale in June 2009. After receiving a notice of default and then a notice of sale in March 2009, plaintiff applied to defendant JP Morgan Chase Bank for a loan modification. She called repeatedly about the status of her application, provided documentation, and was told that she would soon receive a final answer. But then, without further communication to her about the modification, the property was sold at a trustee's sale to JP Morgan Chase's assignee, Deutsch Bank.

The trial court sustained demurrers to three versions of plaintiff's complaint with leave to amend, and finally sustained defendants' demurrers to the fourth version of the complaint without leave to amend. Because plaintiff has identified no error in the trial court's order, we affirm the judgment of dismissal.

FACTS

The trial court described the facts of this case in two earlier demurrer rulings that are incorporated in its final order. The pertinent points are these.

In April 2004, plaintiff obtained a $424,000 loan from Washington Mutual Bank. The deed of trust securing the loan identified California Reconveyance Company (CRC) as the trustee.

In September 2008, Washington Mutual Bank was closed and the Federal Deposit Insurance Corporation was appointed its receiver. Defendant JP Morgan Chase acquired certain of Washington Mutual's assets and liabilities from the FDIC under a purchase and assumption agreement, including plaintiff's loan.

Plaintiff spent considerable sums improving the property, but then had an accident, lost her business and, like many others in the latter part of the decade, could not obtain employment and could not keep up with her payments.

On December 17, 2008, the trustee (CRC) recorded a notice of default under the deed of trust. The notice indicated that plaintiff was more than $10,000 behind in her payments. The notice advised her that her property could be sold without any court

action, and that no sale date could be set until three months from the date of the notice recordation. Plaintiff admitted receiving the December 16, 2008 notice of default (but alleges it was "not serve[d] to borrower on time").

Plaintiff received a notice of trustee's sale on March 21, 2009 (but alleges this was sent "late by mail"). The notice of trustee's sale was recorded on March 20, 2009, and stated that plaintiff's property would be sold at public auction on April 7, 2009. (This date was apparently postponed, but the record contains no documentation of the postponement.) Plaintiff applied for a loan modification on March 23, 2009. Then, in the words of her operative complaint, "on May 7, 2009 borrower sent second application and demand for modification proof, also during the processing borrower attempt to pay the payment to Bank, but Bank did not [accept] borrower's payment, however borrower called to customer service and asked why cannot pay payments. Customer service representative said your loan account is under process of modification soon you will get result, and then you can pay your payments just wait, so during the waiting time not long after that suddenly without any notice of denial modification, property was sold to Lender's own Trustee."

The trustee's sale occurred on June 10, 2009.

The "Trustee's Deed Upon Sale," dated June 16, 2009, was recorded on June 19, 2009. In the Trustee's Deed, CRC conveyed its interest in the property to grantee Deutsche Bank. Also on June 16, 2009, JP Morgan Chase assigned all beneficial interest in plaintiff's deed of trust to Deutsche Bank. The assignment was recorded on June 19, 2009.

Plaintiff sued Deutsche Bank in September 2009, and sued JP Morgan Chase in June 2010. The cases, in which plaintiff represented herself throughout, were consolidated. After a series of defense motions, for judgment on the pleadings and demurrers, all granted by the trial court with leave to amend, the operative complaint alleged seven causes of action.

First, plaintiff alleged that defendants violated Civil Code sections 2923.5 and 2924. (Civil Code section 2923.5 became effective in July 2008 and requires mortgagees

to contact defaulting mortgagors, assess the borrower's financial situation and explore options for the borrower to avoid foreclosure, before filing a notice of default. Civil Code section 2924 governs the exercise of the power of sale by a mortgagee or trustee.) Plaintiff did not specify how defendants violated these sections. She alleged that JP Morgan Chase had a duty to inform her "about DEUTSCHE BANK Trustee in [writing] before June 10, 2009 [the date of sale.]" Plaintiff also alleged violations of Civil Code sections 2923.52 and 2923.53. (These provisions were effective from May 21, 2009 until January 1, 2011 and, among other things, required mortgagees to wait an additional 90 days after a notice of default before giving notice of sale of the property for certain loans.)

Second, plaintiff alleged violation of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601) and implementing regulations. The complaint recites various allegedly improper charges by JP Morgan Chase, concluding JP Morgan Chase is obligated to pay her $95,301.88 (including medical bills). Plaintiff also alleges irregularities in the sale, claiming Deutsche Bank " 'chilled the bidding' " by failing to advertise the time of sale, nature of the property and other information that would have enabled potential buyers to learn about the property, resulting in a sale well below market value. She alleges she is entitled to the difference of $89,634.12 from Deutsche Bank.

Third, plaintiff alleged violation of California's unfair competition law, Business and Professions Code section 17200. Here, she alleges deceptive lending practices and deceptive foreclosure processes, specifically: "The declaration attached to the notice of Default was in breach of [Civil Code] Section 2923.5. Receiving and not responding to the beneficiary statement is in breach of Section 2943[1] of the California Code. JPMORGAN CHASE and DEUTSCHE BANK, had no legal authority to conduct such a proceeding inasmuch as they were in breach of Sections §2923.5 [and] §2924 of the

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1 Civil Code section 2943 governs the obligation of the beneficiary of a mortgage or deed of trust to furnish certain written statements (beneficiary statement, payoff demand statement, short-pay demand statement) to the trustor or mortgagor, and liability for noncompliance.

California Code." (Boldface omitted.) Plaintiff alleges defendants took unfair advantage of Civil Code section 2924 "to facilitate non communications, wrongful communications, purposeful delays, avoiding to answer debt validations, and to avoid facilitation of education or counseling for those who are in financial difficulties." (Boldface omitted.) She also alleges defendants misrepresented "the original terms of the loans, the nature, and details of the transactions entered, including, the true cost of the loan, the distribution of the loan proceeds, and for securitization trust, and if there were undisclosed fees." (Boldface omitted.)

Fourth, the complaint alleged breach of the covenant of good faith and fair dealing. In this cause of action, plaintiff appears to allege that the lender violated plaintiff's title insurance contract, but the claim is not intelligible.

Fifth, the complaint alleges a cause of action for slander of title against Deutsche Bank. Here, plaintiff alleges that Deutsche Bank is liable for slander of title "because Deutsche Bank is not beneficiary or Assignee whether jointly or severally of any Deed of Trust recorded against the property[,]" and Deutsche Bank "had no legal authority to conduct such a proceeding in as much as they breached Sections §2923.5 [and] §2924 of the California Code."

Sixth, the complaint alleged a cause of action entitled "intentional deceit" against both defendants. In this cause of action, plaintiff apparently challenges the assignment of the deed of trust to Deutsche Bank, referring to a "newly recorded assignment [o]n June 10, 2009 to 'Deutsche Bank' processed by an agent who is gainfully employed by JPMorgan Chase Bank." She alleged that "a valid written assignment, consistent with the statute of frauds, is a prerequisite to effectuate an assignment Section §2923.5 of the California Code[,]" and the "Deed of trust substitution is absolute trickery and a means to mislead the court and others into the devious and dishonest business practice these entit[ies] continue to propagate on innocent people such as Plaintiff."

Finally, the complaint alleged a cause of action for emotional distress, asserting plaintiff "has been treated inconstantly by lender" and defendants "negligently inflicted emotional distress."

After a hearing on May 20, 2011, the trial court issued an order on May 23, 2011, sustaining defendants' demurrers without leave to amend. The order incorporated the court's earlier rulings of August 11, 2010 and March 25, 2011, observing that plaintiff's arguments "largely repeat matters previously debated at length."

Plaintiff filed a new trial motion that was denied on July 8, 2011, and plaintiff filed notices of appeal on July 20 and July 25, 2011; the court entered an order of dismissal on July 28, 2011.

DISCUSSION

We find plaintiff's contentions on appeal to be unintelligible. She lists the legal violations she claims defendants committed, which include statutory violations under Civil Code sections 2923.52, 2923.53 and 2924 and Business and Professions Code section 17200 as to both defendants, and under Civil Code section 2923.5 by Deutsche Bank only. Other violations listed as to Deutsche Bank include fraud at the trustee's sale in purchasing below market value, negligence and slander of title, and emotional distress. As to JP Morgan Chase, plaintiff lists intentional deceit, violation of unidentified Housing and Urban Development (HUD) regulations and the federal Real Estate Settlement Procedures Act and regulations (12 U.S.C. § 2601 et seq. & 24 C.F.R. § 3500 (2012)), breach of contract, breach of the covenant of good faith and fair dealing, and emotional distress.

This list of violations is untethered to any facts in plaintiff's appellate brief. Her brief contains nothing identifying any legal error by the trial court. The most we can deduce from her arguments is, first, her outrage flowing from the fact that the sale of her home occurred while the bank purported to be in loan modification discussions with her, and second, her assertion that Deutsche Bank "was 'not the proper holder' or 'beneficiary entitled to payment of the Promissory note' and did not 'hold the properly assigned Security Instrument.'" But neither of these points gives rise to a viable complaint against defendants.

It is well settled that failure to make a coherent argument or to cite supporting authority for contentions constitutes a waiver of an issue on appeal. (E.g., *Mansell v.*

Board of Administration (1994) 30 Cal.App.4th 539, 545-546 ["We are not required to search the record to ascertain whether it contains support for [the plaintiff's] contentions. [Citation.] Further, it is established that '. . . an appellate brief "should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." [Citation.] [¶] . . . This court is not inclined to act as counsel for . . . appellant and furnish a legal argument as to how the trial court's rulings . . . constituted an abuse of discretion.' [Citation.] [¶] Because it is not this court's function to serve as [plaintiff's] backup appellate counsel . . . the . . . contentions are waived."].) Nor does plaintiff's status as a party unrepresented by counsel entitle her to any special consideration. (*Williams v. Pacific Mutual Life Ins. Co.*(1986) 186 Cal.App.3d 941, 944 ["an appellant appearing in propria persona is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants and attorneys"].)

The trial court went to considerable lengths to ensure that plaintiff had every opportunity to state a legally sustainable claim for relief. The court's two earlier rulings on defendants' motions included detailed and reasoned explanations of the court's bases for concluding that plaintiff failed to state any causes of action against defendants. Our review of the trial court's rulings reveals no apparent error, and plaintiff's brief points to none. Thus:

1. The trial court found that plaintiff stated no claims for the various statutory violations alleged. As for Civil Code sections 2923.52 and 2923.53, the courts have held that there is no private right of action. (*Vuki v. Superior Court* (2010) 189 Cal.App.4th 791, 794, 799 ["neither section 2923.52 nor section 2923.53 provides any private right of action"; "[e]nforcement of sections 2923.52 and 2923.53 is committed to regulatory agencies, which have implicit power to terminate the license of any company whose program is not in compliance"].) While there is a private right of action under Civil Code section 2923.5, "[t]he right of action is limited to obtaining a postponement of an impending foreclosure to permit the lender to comply with section 2923.5." (*Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 214.) And while plaintiff alleged that

defendants violated Civil Code sections 2924 (governing exercise of the power of sale), she does not explain how they did so. Nor does plaintiff claim to have tendered full payment, and "[i]t is settled that an action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security." (*Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 578, quoted in *Mabry*, at p. 225.)

2. As for plaintiff's claim alleging violation of the Real Estate Settlement Procedures Act and implementing regulations, we agree with the trial court's conclusion in its March 25, 2011 ruling that plaintiff "has not alleged how JP Morgan Chase has violated any provision of the . . . Act or the regulations relating to it . . . ." We are likewise unable to deduce from the complaint how defendants violated the federal statute and regulation cited. (The trial court also pointed out, in its March 25, 2011 ruling, that documents of which it took judicial notice (including the purchase agreement under which JP Morgan Chase obtained Washington Mutual's assets) showed that the FDIC assumed liability for claims against Washington Mutual, so JP Morgan Chase is not liable for any wrongdoing by Washington Mutual.) The further claim in this cause of action that Deutsche Bank " 'chilled the bidding' " by failing to advertise the foreclosure sale bears no apparent relation to the federal statute.

3. The trial court found plaintiff did not state a claim for violation of the unfair competition law (Bus. & Prof. Code, § 17200) because her allegations of deceptive lending and foreclosure practices relied on claimed violations of the Civil Code, discussed *ante*. Plaintiff could not state a claim under those statutes, and "cannot circumvent a bar against a cause of action by recasting the action as one pursuant to Business and Professions Code section 17200." Again, plaintiff does not offer on appeal any basis for concluding the trial court erred on this point. In the operative complaint, plaintiff added still another statutory provision, but stated only, without elaboration, that "[r]eceiving and not responding to the beneficiary statement is in breach of Section §2943 of the California Code." (Boldface omitted.) This allegation, too, is not sufficiently understandable to state a cause of action. (And Deutsche Bank was not

involved in the foreclosure process before JP Morgan Chase's assignment of the deed of trust, so Deutsche Bank could not have violated Civil Code section 2943.)

4. Plaintiff's cause of action for breach of the covenant of good faith and fair dealing is, as noted earlier, unintelligible. It is not clear what contract is the subject of the claim. Assuming it was the deed of trust, the trial court concluded that plaintiff "has not pleaded her performance under the deed of trust or a viable excuse for non-performance," and therefore could not state a cause of action. We see no error in that conclusion. (See *Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 [the implied covenant rests upon the existence of a specific contractual obligation; "[i]f there exists a contractual relationship between the parties, . . . the implied covenant is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated in the contract"].)

5. In the fifth cause of action, plaintiff claims Deutsche Bank is liable for slander of title because Deutsche Bank was not the beneficiary of the deed of trust and had no authority "to conduct such a proceeding." Again, it is difficult to understand what plaintiff means, but she apparently objects that Deutsche Bank "caused a Trustee's Deed upon Sale on June 10, 2009." Slander of title involves the unprivileged publication of matter that is untrue and disparaging to another's property and results in pecuniary damage. (*Glass v. Gulf Oil Corp.* (1970) 12 Cal.App.3d 412, 419.) As the trial court stated, the filing of documents pursuant to the foreclosure procedure is subject to the qualified common interest privilege of Civil Code section 47 (Civ. Code, § 2924, subd. (d); *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 341), and plaintiff alleged no facts demonstrating Deutsche Bank acted with malice. As for the claim of lack of authority to conduct a foreclosure sale, we do not know what that means, either. CRC, the trustee under the deed of trust, began the foreclosure proceedings by recording the notice of default and election to sell, and Deutsche Bank was not involved until JP Morgan Chase assigned the deed of trust to Deutsche Bank.

6. The cause of action for intentional deceit likewise fails to state a viable claim. Plaintiff apparently challenges the validity of the assignment from JP Morgan Chase to

Deutsche Bank, saying the "[d]eed of trust substitution is absolute trickery." The essential allegations of a fraud claim are a representation, falsity, knowledge of falsity, intent to deceive, and reliance and resulting damage (causation) (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 710, p. 125), and " 'the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.' " (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) As the trial court concluded in respect of plaintiff's earlier pleading, plaintiff's allegations do not plead fraud, "either substantively or with particularity."

7. Finally, in her cause of action for emotional distress, plaintiff merely alleges that she "has been treated inconstantly by lender." This is insufficient to state a cause of action for intentional or negligent infliction of emotional distress, which requires extreme or outrageous conduct causing severe emotional distress. No such facts are alleged.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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GRIMES, J.

WE CONCUR:

FLIER, Acting P.J.

SORTINO, J.*

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