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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee, etc., Plaintiff and Respondent, v. NINO GEVORKOVA, Defendant and Appellant.	B270582 (Los Angeles County Super. Ct. No. BC528513)

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

Nino Gevorkova, in pro. per., for Defendant and Appellant.

Wright, Finlay & Zak, T. Robert Finlay and Charles C. McKenna for Plaintiff and Respondent.

Defendant and appellant Nino Gevorkova appeals from a judgment following a successful motion for summary judgment by plaintiff and respondent Deutsche Bank National Trust Company (Deutsche Bank). Deutsche Bank filed this action to clarify the status of a trust deed on real property that Gevorkova refinanced in 2005. In December 2008, Gevorkova executed and recorded a purported "Notice of Rescission" of the trust deed (Rescission Notice). Deutsche Bank alleged that the Rescission Notice was fraudulent and void, and sought to remove the cloud on title that it created.

Deutsche Bank moved for summary judgment, which the trial court granted on February 22, 2016. Gevorkova challenges the ruling on a number of grounds that we conclude have no merit. We therefore affirm.

BACKGROUND

1. *Gevorkova's Rescission Notice*

On December 12, 2005, Gevorkova obtained a $565,000 loan to refinance property located on North Sixth Street in Montebello, California (the Property). The loan was secured by a deed of trust, of which Deutsche Bank is the current beneficiary.

In 2007, a notice of default was recorded on the property after Gevorkova failed to make payments. On December 18, 2008, Gevorkova recorded the Rescission Notice. The notice stated that the "Deed of Trust and obligations secured thereby" on the Property were rescinded, citing various legal provisions, and that the "lien pursuant to this deed of trust is void ab initio."

Gevorkova subsequently entered into a "Home Affordable Modification Trial Period Plan" with Carrington Mortgage Services (Carrington), Deutsche Bank's loan servicing agent, which lowered her mortgage payments. Her loan was

permanently modified in March 2010. However, she defaulted again in 2013, and Carrington proceeded with foreclosure.

In August 2013, Gevorkova filed an action against Deutsche Bank alleging causes of action for unfair business practices. According to the uncontroverted evidence submitted below, Deutsche Bank discovered the Rescission Notice while defending that action. Gevorkova's action was ultimately dismissed.

Deutsche Bank filed this action on November 21, 2013. Deutsche Bank alleged in its complaint that the loan on the Property had not been paid off, and that Gevorkova had fraudulently filed the Rescission Notice to eliminate Deutsche Bank's interest in the trust deed "and create a cloud on title to delay Plaintiff's non-judicial foreclosure efforts." Deutsche Bank asserted claims for "Cancellation and Setting Aside of Instruments," declaratory relief, fraud, and slander of title. Deutsche Bank subsequently dismissed its fraud claim.

2. *Deutsche Bank's Summary Judgment Motion*

Deutsche Bank moved for summary judgment on its three remaining claims on October 22, 2014. In support of the motion, it submitted evidence that Gevorkova received notice when she refinanced the Property on December 12, 2005, that, under federal law, her right to rescind the transaction would expire three days later, on December 15, 2005. Deutsche Bank submitted a copy of a "Notice of Right to Cancel" form that Gevorkova executed on December 12, 2005. That notice contained an instruction on "HOW TO CANCEL," stating that a cancelation notice must be sent by "no later than MIDNIGHT of 12-15-05," and included a form to send if Gevorkova chose to cancel.

Deutsche Bank also submitted a declaration from a Carringon vice-president, Elizabeth Ostermann, testifying that the Rescission Notice created a "cloud on title" that might affect Deutsche Bank's interests both pre- and post-foreclosure. Ostermann stated that, based upon her review of the file, she did not believe that the Rescission Notice had been served on the beneficiary of the loan. She testified that Carrington discovered the Rescission Notice in the course of defending Gevorkova's lawsuit.

In opposing the motion, Gevorkova admitted that she filed the Rescission Notice on December 18, 2008. She claimed that the Rescission Notice was "properly recorded according to law." She also argued that Deutsche Bank's action was barred by the five-year statute of limitations in Code of Civil Procedure section 319 and under the equitable doctrines of laches and estoppel.[1] Gevorkova's response to Deutsche Bank's Separate Statement of Undisputed Material Facts contained admissions and denials, but did not include any citations to evidence.[2]

The summary judgment motion originally came on for hearing on January 7, 2015. At that hearing, the trial court stayed the case as a result of a notice from Gevorkova that she had filed for bankruptcy protection. The motion again came on

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[1] Subsequent undesignated statutory references are to the Code of Civil Procedure.

[2] Gevorkova apparently submitted a declaration in response to Deutsche Bank's motion that is not in the appellate record. Portions of the declaration are quoted in objections that Deutsche Bank filed, which the trial court overruled on the ground that the challenged portions of the declaration consisted of evidentiary objections and legal argument.

for hearing on December 31, 2015, at which time the trial court ordered additional briefing "on the issue of whether [Deutsche Bank] can assert an equitable basis to avoid constructive notice" of the Rescission Notice.[3]

Deutsche Bank filed a supplemental brief on January 20, 2016. The court then heard the motion on February 3, 2016. Gevorkova did not appear.

The trial court granted the motion. In the trial court's tentative ruling, which it subsequently adopted as final, the court found that there was undisputed evidence that: (1) the loan on the Property was not rescinded; (2) the Rescission Notice was untimely; and (3) the Rescission Notice "creates a cloud on title which, if left outstanding, will cast doubt as to Deutsche Bank's interest in the subject loan and property." The court also rejected Gevorkova's statute of limitations defense on the ground that it was not pleaded, and rejected her laches and estoppel defenses based upon the lack of evidence supporting them. The court awarded Deutsche Bank $14,208 as damages on its cause of action for slander of title based upon Deutsche Bank's uncontroverted evidence that it spent that amount in "attorney fees and costs to clear title to the property."

The trial court subsequently made similar findings in a written order on February 22, 2016, and entered judgment that same day. Gevorkova filed her notice of appeal on February 29, 2016.

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[3] The appellate record does not reflect when or why the bankruptcy stay was lifted.

DISCUSSION

1. *Standard of Review*

We review an order granting summary judgment under the de novo standard. We interpret the evidence in the light most favorable to Gevorkova as the nonmoving party and resolve all doubts about the propriety of granting the motion in her favor. (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 206.) Although we independently review Deutsche Bank's motion, Gevorkova has the responsibility as the appellant to demonstrate that the trial court's ruling was erroneous. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 372.) Even under the de novo standard used to review summary judgment motions, "our review is limited to issues adequately raised and supported in the appellant's brief." (*Ibid.*; *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125.)

A plaintiff who moves for summary judgment has the initial burden to produce admissible evidence on each element of a cause of action entitling him or her to judgment. (§ 437c, subd. (p)(1); *S.B.C.C., Inc. v. St. Paul Fire & Marine Ins. Co.* (2010) 186 Cal.App.4th 383, 388.) The burden then shifts to the defendant to "show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (§ 437c, subd. (p)(1).) The defendant must make that showing with admissible evidence. (§ 437c, subds. (b)(2), (d) & (p)(1).)

2. *Gevorkova's Arguments*

In her brief, Gevorkova acknowledges that she filed the Rescission Notice on December 18, 2008. She also does not challenge the trial court's findings that the trust deed in fact was

not rescinded.[4] Rather, she argues that: (1) Deutsche Bank's claims are barred by the statute of limitations; (2) those claims were untimely under the doctrine of laches; (3) Deutsche Bank was estopped from bringing its claims; (4) Deutsche Bank may not invoke the "tender rule" because of its own breach of contract; and (5) the trial court "lacked jurisdiction" to adjudicate Deutsche Bank's request for attorney fees because the case was on appeal. We consider each of these arguments below.

a. *Statute of Limitations*

Gevorkova did not identify the statute of limitations as an affirmative defense in her answer and did not seek to file an amended answer. The failure to assert the defense by answer or demurrer waived it. (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 581.) The trial court therefore properly declined to consider the statute of limitations as a defense to summary judgment. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 382 ["a defect in the answer may entitle the moving party plaintiff to a summary judgment if the only matter in dispute is a defense that has not been intelligibly asserted in the answer"].)

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[4] Gevorkova's brief contains a heading, without any following argument, stating that "THE NOTICE OF RESCISSION AFFIXED TO TITLE T PRESENTED NO CLOUD OR SUSPICION AS TO RESPONDENT'S INTEREST; NOR DID IT RENDER THE PROPERTY INALIANABLE [*sic*]." Because Gevorkova presents no argument or citations to evidence or authority in support of that claim we do not consider it. "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.)

Moreover, Gevorkova has not made a colorable statute of limitations argument. Gevorkova claimed in the trial court and argues on appeal that the five-year statute contained in section 319 applies to Deutsche Bank's claims. The undisputed facts show that Gevorkova recorded the Rescission Notice on December 18, 2008. Deutsche Bank filed this action on November 21, 2013. Deutsche Bank's lawsuit was therefore filed within five years of Gevorkova's act of recording the Rescission Notice.

It is not clear that section 319 is in fact the appropriate statute of limitations for Deutsche Bank's claims to set aside the Rescission Notice. In *Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725 (*Zakaessian*), the court held that the three-year statute of limitations in section 338, subdivision (4) (now subdivision (d)) applies to a cause of action to set aside a void instrument based upon fraud or mistake. The statute of limitations on a claim for slander of title to real property is also three years. (§ 338, subd. (g).)

However, Gevorkova's argument would not have merit even if we were to disregard her failure to plead the statute of limitations and her assertion that section 319 applies. Deutsche Bank's claims did not accrue until it discovered the false instrument. (§ 338, subd. (d); *Zakaessian*, 70 Cal.App.2d at p. 725; *Arthur v. Davis* (1981) 126 Cal.App.3d 684, 691–692 [applying the discovery rule to a claim for slander of title].) The evidence is uncontroverted that Deutsche Bank discovered the Rescission Notice only after Gevorkova had filed her action for unfair business practices in August 2013. Moreover, Deutsche Bank did not receive constructive notice of the Rescission Notice because Gevorkova filed the Rescission Notice after she had obtained the refinance loan, and Deutsche Bank was therefore

not a "subsequent" mortagee. (Civ. Code, § 1213.) Thus, Deutsche Bank's complaint was timely even if a three-year statute of limitations applied.

b. *Laches*

As mentioned, the unrebutted evidence showed that Deutsche Bank discovered the Rescission Notice only months before it filed this action. Thus, the trial court correctly concluded there was no factual basis for a laches defense.

c. *Estoppel*

Gevorkova argues that judicial estoppel precludes Deutsche Bank from challenging the Rescission Notice. Judicial estoppel is a discretionary doctrine that permits a court to disregard a party's claim or argument that is inconsistent with a prior argument that the party made to its advantage in a judicial or quasi-judicial proceeding. (*Stratton v. Beck* (2017) 9 Cal.App.5th 483, 495.) Gevorkova does not explain how that doctrine might apply here and does not identify any prior judicial statement or argument by Deutsche Bank that is inconsistent with its position here. We therefore reject the argument.

d. *The Tender Rule*

Deutsche Bank argued below that any purported rescission of the trust deed and refinance loan by Gevorkova was ineffective because she failed to tender the amount of the loan. The issue is moot on appeal because we affirm the trial court's ruling on other grounds.

e. *Attorney Fees and Costs*

Gevorkova's argument on this issue is unclear, but she apparently claims that the trial court did not have jurisdiction to award attorney fees because she had already appealed the trial court's summary judgment ruling. Even if there were a legal basis for that argument, the record does not support the claimed sequence of events. The trial court awarded Deutsche Bank its attorney fees and costs as an element of damages on its claim for slander of title. The attorney fee award was included in the judgment filed on February 22, 2016. Gevorkova filed her notice of appeal seven days later, on February 29, 2016.

In any event, an order awarding attorney fees may be entered postjudgment and is separately appealable. (§ 904.1, subd. (a)(2); *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1519–1520.)

DISPOSITION

The judgment is affirmed. Deutsche Bank National Trust Company is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.