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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

ROGER FELDMAN, Plaintiff and Appellant, v. FIDELITY NATIONAL TITLE COMPANY et al., Defendants and Respondents.	B234585 (Los Angeles County Super. Ct. No. EC049684)

APPEAL from a judgment of the Superior Court of Los Angeles County. David S. Milton, Judge. Affirmed.

Law Offices of Arshak Bartoumian and Arshak Bartoumian for Plaintiff and Appellant.

Garrett & Tully, Ryan C. Squire and Scott B. Mahler for Defendants and Respondents.

Roger Feldman sued Fidelity National Title Company and its employee Maria Triangelo-Molina ("the Fidelity defendants"), among others, in litigation resulting from real property financing and transactions. On the first day of trial, the Fidelity defendants successfully moved for judgment on the pleadings on standing grounds. Feldman appeals, and we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

As this appeal arises from the judgment after the successful motion for judgment on the pleadings, we accept as true the facts alleged in the First Amended Complaint. (*Foundation for Taxpayer and Consumer Rights v. Nextel Communications, Inc.* (2006) 143 Cal.App.4th 131, 135.) Roger and Angela Feldman,[1] mother and son, purchased a property in Glendale in 2001. Roger executed a quitclaim deed conveying the properly to Angela in 2003. Angela executed a deed of trust to the property to Anton Holden in January 2008. She conveyed the property to Norayr Davtyan by grant deed in April 2008.[2] The conveyance was for purposes of obtaining refinancing.

Davtyan refinanced the property in June 2008. On July 11, 2008, a new deed of trust in favor of Holden was recorded against the property. The Fidelity defendants handled the escrow in connection with this transaction. Four days later, on July 15, 2008, Angela recorded a grant deed from Davtyan conveying the property back to her.

The following year, on March 30, 2009, Holden filed a notice of default and election to sell the property under the deed of trust. On April 21, 2009, Angela executed a grant deed for the property to Roger. The grant deed was recorded on April 23, 2009. Holden ultimately took back the property by means of a trustee's deed.

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[1] We refer to the Feldmans by their first names for clarity.

[2] The Fidelity Defendants request that we take judicial notice of the grant deed for this conveyance that was recorded in April 2008. Although courts may take judicial notice of grant deeds where appropriate (see, e.g., *Satchmed Plaza Owners Assn. v. UWMC Hosp. Corp.* (2008) 167 Cal.App.4th 1034, 1040-1041), we deny the request because judicial notice of this document is unnecessary to resolve the issues presented by the appeal.

Roger sued numerous individuals and businesses that had been involved in dealings concerning the property, including the Fidelity defendants. Immediately prior to the commencement of trial, the Fidelity defendants moved for judgment on the pleadings on the basis that Roger, who did not own the property at the time Fidelity handled the escrow, had no standing to sue. The court heard argument on the motion after a recess to permit counsel and the court to review the motion. After argument, the court granted the motion for judgment on the pleadings on the ten causes of action asserted against the Fidelity defendants. The court explained, "For the reasons set forth in the moving papers and the court agrees, could not be title claims, equity relief claims, there's no contract, no fiduciary duty, conversion is not possible, no allegations of fraud for these defendants, no misrepresentations demonstrated, covenants, there's no contract. There's no standing by Mr. Feldman. Granted." Roger appeals.

DISCUSSION

Roger's appellate brief fails to comply with California Rules of Court, rule 8.204(a)(1)(B), which requires litigants to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." Rather than developing distinct arguments challenging the judgment, Roger has instead submitted a brief including paragraphs of indistinct, conclusory allegations of error by the court. Although many of these contentions are unsupported by adequate factual or legal analysis (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com*. (2006) 135 Cal.App.4th 793, 814), we attempt to separate out and address each assertion in turn.

First, Roger raises several arguments as to the propriety of hearing the motion itself. He contends that the motion could not be heard on the day of trial because California Code of Civil Procedure[3] section 438, subdivision (e) provides that no motion for judgment on the pleadings "may be made pursuant to this section if a pretrial

[3] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits." Not only does this provision specifically authorize the trial court to permit a later-filed motion for judgment on the pleadings, but the motion was brought both under the statutory provisions for a motion for judgment on the pleadings and under the common-law rules for such motions, and nonstatutory motions for judgment on the pleadings may be made at any time prior to the trial or at the trial itself. (*Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650 (*Stoops*).) Roger claims that the motion was brought without proper notice, but no notice is required for nonstatutory motions for judgment on the pleadings; they may even be made orally at the outset of trial. (*Kortmeyer v. California Ins. Guarantee Assn.* (1992) 9 Cal.App.4th 1285, 1293 (*Kortmeyer*).) Moreover, even if the formal written notice were deficient, "the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion. [Citations.] This rule applies even when no notice was given at all. [citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the motion was insufficient or defective." (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930, disapproved in part on another ground in *Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 560.)

Roger next asserts two purported deficiencies in the Fidelity defendants' notice of motion, which stated that the motion was based on "Code of Civil Procedure sections 438(c), 438.80 and common law authority (*Sofias v. Bank of America* (1985) 172 Cal.App.3d 583, 586)." He correctly observes that there is no section 438.80, and argues that "since the code for the notice does not exist, the motion is flawed and should have been denied." He also contends that the motion could not be based on *Sofias v. Bank of America*, because that case "involved a construction loan and a mechanics lien," issues not present here. These arguments are meritless. *Sofias v. Bank of America* is apposite because it concerns the procedures for nonstatutory motions for judgment on the

pleadings. The notice of motion fully advised Roger of the nonstatutory basis for the motion; and while the Code of Civil Procedure includes no section 438.80, the notice also listed section 438, the proper statutory basis for the motion. A notice of motion is sufficient if it fairly advises opposing counsel of the issues to be raised. (*Tarman v. Sherwin* (1961) 189 Cal.App.2d 49, 52.) Moreover, defects in the notice of motion are waived when a party participates in the hearing on the motion without objection or demonstration of prejudice, as occurred here.[4] (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1288-1289.) Finally, flaws in the notice are also irrelevant because no written notice is required for a nonstatutory motion for judgment on the pleadings. (*Kortmeyer*, *supra*, 9 Cal.App.4th at p. 1293.)

Roger next contends that because motions for judgment on the pleadings have the purpose and effect of a general demurrer, "the same rules apply" to both motions. Therefore, he argues that the motion for judgment on the pleadings must have been brought within 30 days before trial, as with a demurrer. Roger bases this argument on *Mathews v. State of California ex rel. Department of Transportation* (1978) 82 Cal.App.3d 116 at page 119, in which the court remarked upon the similarity between a motion for judgment on the pleadings and a general demurrer. The court said, "the same rules apply to ruling on such a motion as apply to ruling upon a demurrer," and it proceeded to discuss those rules: that the complaint is examined to determine whether it states a cause of action; that the allegations of the complaint are taken as true for this purpose; and that review of both judgments on the pleadings and dismissals after the sustaining of a general demurrer involves an examination of whether the allegations taken as true state a cause of action. (*Id.* at pp. 119-120.) The *Mathews* court did not hold that the same procedural rules applicable to demurrers apply to motions for judgment on the

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[4] Roger contends that his counsel "objected to said motion and requested a continuance," but the portion of the reporter's transcript to which he refers to support this statement contains no objection to the motion and no request for a continuance, only counsel's argument on the merits of the motion and contention that the plaintiffs should be given "the opportunity to put [on] their case in chief prior to [the court] making the determination" on the motion.

pleadings, and the law is to the contrary. (Compare § 430.40 [time for filing demurrers] with § 438, subd. (e) [time for filing statutory motion for judgment on the pleadings] and *Stoops*, *supra*, 100 Cal.App.4th at p. 650 [nonstatutory motions for judgment on the pleadings may be made at any time prior to the trial or at trial].)

Roger complains that "there was no reason given why on an emergency basis on the day of trial this motion was to be brought and there is no declaration by moving party or its counsel on why the motion could not have been heard or made earlier," but he cites no authority requiring that a motion for judgment on the pleadings brought at the time of trial be accompanied by a showing that it could not have been brought earlier. Roger has not established any error here. As we have already discussed, nonstatutory motions for motion for judgment on the pleadings may be brought at any time, including at trial (*Stoops*, *supra*, 100 Cal.App.4th at p. 650); and late filings of statutory motions are specifically permitted with court approval by section 438, subdivision (e) without any requirement that the moving party show good cause for late filing. (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1063 (*Burnett*) [§ 438 imposes no good cause limitation on the trial court's ability to permit late filings of motions for judgment on the pleadings].)

Roger next states, "Here the trial court in its application on the standard for the motion for judgment on the pleadings did not use the proper legal standard and substantial evidence was presented to show that there was evidence that would have been derived from the trial on its merits, for a judgment in favor of Appellants." Roger, however, fails to include any further argument to support these assertions, and therefore has forfeited this issue on appeal. "An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as

waived. [Citation.]" (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Roger next claims that his attorney neither objected to nor opposed the motion and that "proper preparation" was not given to the motion for judgment on the pleadings. The reporter's transcript demonstrates that Roger's counsel opposed the motion on its merits, and Roger fails to explain what additional actions he claims his counsel should have taken. Roger has not demonstrated any error. "If an appeal is pursued, the party asserting trial court error may not then rest on the bare assertion of error but must present argument and legal authority on each point raised. [Citation.] This . . . rule is founded on the principle that an appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness." (*Boyle v. CertainTeed Corp*. (2006) 137 Cal.App.4th 645, 649-650.)

Roger's next two arguments concern the presentation of evidence. First, he contends that the trial court should have permitted him to present his case in chief before ruling on the motion for judgment on the pleadings; and second, he asserts that the motion for judgment on the pleadings should not have been granted because the Fidelity defendants failed to submit evidence in their motion to demonstrate an entitlement to judgment in their favor. A motion for judgment on the pleadings, however, tests the allegations of the complaint, supplemented by any matter of which the trial court takes judicial notice, to determine whether the plaintiff has stated a cause of action. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166.) Extrinsic evidence is not properly presented on a motion for judgment on the pleadings. (*Burnett*, *supra*, 123 Cal.App.4th at p. 1063.)

Roger finally argues the court should have given him leave to amend the complaint. The trial court abuses its discretion in refusing leave to amend if the plaintiff can show that he or she is able to state a claim for relief. (*Wedemeyer v. Safeco Ins. Co. of America* (2008) 160 Cal.App.4th 1297, 1302.) Roger did not advise the trial court of any allegations he could add to salvage the complaint, nor has he made any showing on appeal that he could have amended his complaint to state a cause of action. In the

absence of such a showing, the trial court did not abuse its discretion when it did not grant leave to amend the complaint. (*Weiss v. Washington Mutual Bank* (2007) 147 Cal.App.4th 72, 78.)

DISPOSITION

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

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.