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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TERRY LOUIS,

Plaintiff and Appellant,

v.

W PARTNERS, LLC,

Defendant and
Respondent.

B265768

(Los Angeles County
Super. Ct. No. BC573681)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard E. Rico, Judge. Affirmed.

Terry Louis, in pro. per.; and Ruth C. Rose for Plaintiff and Appellant.

Law Office of Stan Stern and Stan Stern; Goodstein & Berman and Bruce A. Berman for Defendant and Respondent.

In April 2014, appellant Terry Louis and defendants below entered into a real estate transaction in which respondent W Partners, LLC bought Louis's home in Gardena, which Louis then leased-back from respondent. The transaction also granted Louis a right of first refusal to repurchase the home from respondent at fair market value. Almost a year after the parties executed their purchase agreement, and three months after they executed a November 2014 settlement and release agreement, Louis sued the defendants for, among other things, fraud and to quiet title to the home. The first amended complaint revolves entirely on the April 2014 transaction.

After sustaining the defendants' demurrer to Louis's first amended complaint without leave to amend, the trial court dismissed the case with prejudice. Louis appeals the dismissal of his case, arguing he stated a valid cause of action for fraud, the transaction was intended to be a loan, not a purchase agreement, and in any event we should grant him leave to file a second amended complaint. As explained below, we conclude the November 2014 release agreement signed by the parties bars Louis's causes of action against respondent and he has not demonstrated how he can amend his complaint to state a valid cause of action. Accordingly, we affirm.

BACKGROUND

1. Complaint

In February 2015, Louis filed a complaint against respondent, The 13319 S. Saint Andrews Place Trust, and Peter J. Winn (defendants). The defendants filed a timely demurrer and motion to strike the complaint. In response to the demurrer and motion to strike, Louis filed a first amended complaint.

2. First Amended Complaint

For present purposes, the first amended complaint was substantively the same as the original complaint and alleged the same four causes of action, namely: (1) declaratory relief, (2) fraud, (3) violation of Civil Code section 1695 et seq., and (4) quiet title. Louis attached various documents to the first amended complaint, including an April 2014 “Equity Purchase Agreement” between Louis and respondent (Purchase Agreement), an April 2014 grant deed transferring the home from Louis to a trust of which respondent was the trustee, and a November 2014 “Settlement and Release Agreement” between Louis on the one hand and respondent and defendant Winn on the other hand (Release).

In his first amended complaint (the operative pleading), Louis alleged the defendants had defrauded him into executing the Purchase Agreement and selling his home to respondent at an unconscionably low price and on unconscionable terms. The Purchase Agreement provided that respondent would purchase the home from Louis and that he would then lease it back (paying monthly rental to respondent) and have a right of first refusal to repurchase the home from respondent at fair market value. However, if Louis was late with any rental payments, his right of first refusal “shall be cancelled.” Despite the purchase language of the Purchase Agreement and related documents, Louis alleged the transaction was intended to be a mortgage loan so that he could retain his home, which was in foreclosure at the time he executed the Purchase Agreement. He also claimed the Purchase Agreement violated the Home Equity Sales Contract Act, Civil Code sections 1695 et seq. Louis sought declaratory relief as to

the rights and obligations of the parties, to quiet title to the home, and an award of damages, including punitive damages.

Other than including the Release as an attachment, the first amended complaint did not mention or otherwise address the Release. As is discussed below, however, the Release is significant here. Louis, respondent, and defendant Winn executed the Release in November 2014, i.e., seven months after signing the Purchase Agreement. The Release recited the existence of the Purchase Agreement and the terms of Louis's leaseback agreement with respondent. The Release indicated Louis failed to make his November 2014 rental payment. As a result, under the terms of the Purchase Agreement (specifically, the leaseback provisions), Louis lost his right of first refusal to repurchase the home. Through the Release, however, the parties agreed that the original terms of the leaseback agreement would be reinstated, including Louis's right of first refusal.

In addition to reinstating the leaseback agreement, the Release included a broad release of claims: "Each party understands and agrees that the foregoing general release set forth above shall extend to any and all claims of every nature and kind whatsoever, whether such claims are known or unknown, suspected or unsuspected, and all rights under Section 1542 of the California Civil Code are expressly waived. This Section reads as follows: [¶] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. [¶] . . . [¶] Each party acknowledges that it, he or she hereafter may discover facts different from or in addition to those which it, he or she now knows or believes to be true with respect to the release of

claims, and each party agrees that this [Release] shall continue and remain in effect in all respects notwithstanding the discovery or existence of such different or additional facts, except to the extent stated otherwise herein.” The Release also indicates all parties had the opportunity to consult with legal counsel.

The defendants filed a demurrer and motion to strike the first amended complaint. In their demurrer, the defendants argued both that Louis failed to state a valid fraud cause of action, and that, in light of the Release, the entire first amended complaint failed to state any cause of action.

Louis did not oppose the defendants’ demurrer or motion to strike.

3. The trial court sustains the demurrer without leave to amend and dismisses the action with prejudice.

The hearing on the defendants’ motions was held June 30, 2015. After hearing argument, the trial court sustained the demurrer without leave to amend.¹ The court took the motion to strike off calendar as moot. The next week, on July 6, 2015, the trial court entered its order dismissing the action with prejudice.

4. Louis appeals.

On July 28, 2015, Louis filed a notice of appeal from the court’s judgment of dismissal. The notice of appeal listed only W Partners, LLC as the respondent.

DISCUSSION

1. Standard of Review

In determining whether Louis “stated a claim for relief, our standard of review is clear: ‘“We treat the demurrer as

¹ The minute order for the June 30 hearing indicates there was no reporter present and the record on appeal contains no reporter’s transcript or substitute.

admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 (*Zelig*)). “On appeal from an order of dismissal after an order sustaining a demurrer, the standard of review is de novo: we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.” (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 439.)

2. Applicable Law

A demurrer admits all material facts properly pleaded. (*Holland v. Morse Diesel International, Inc.* (2001) 86 Cal.App.4th 1443, 1447.) However, when allegations in a complaint are contradicted by facts appearing in exhibits attached to the complaint, the facts in the exhibits are given precedence over the allegations of the complaint. (*Moran v. Prime Healthcare Management, Inc.* (2016) 3 Cal.App.5th 1131, 1145–1146 (*Moran*); *Holland*, at p. 1447.)

Following the sustaining of a demurrer, courts liberally grant leave to amend. Indeed, “[g]enerally it is an abuse of

discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment.’” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 (*Goodman*)). Even if, as is the case here, a plaintiff failed to ask the trial court for leave to amend, the plaintiff may seek leave to amend for the first time on appeal. (*Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1072.) In seeking leave to amend on appeal, however, the plaintiff must demonstrate how it could amend its pleading and how its proposed amendments would change the legal effect of the pleading. Thus, “ ‘the burden is on the plaintiff to demonstrate that the trial court abused its discretion. [Citations.] Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ ” (*Goodman, supra*, 18 Cal.3d at p. 349; see *Zelig, supra*, 27 Cal.4th at p. 1126.)

3. The trial court did not err in sustaining the demurrer without leave to amend.

On appeal, Louis argues the first amended complaint (a) states a cause of action for fraud, and (b) citing Civil Code section 2925, adequately alleges that the parties intended the grant deed to be a mortgage loan, and not a purchase.² Louis cites cases discussing transactions disguised as purchases that are in fact loans and that courts may disregard documents describing such transactions as purchases.

Importantly, however, Louis does not address respondent’s argument—made both before the trial court and on appeal—that

² On appeal, Louis makes no argument with respect to his third cause of action for alleged violations of the Home Equity Sales Contract Act, Civil Code section 1695 et seq. He appears to have abandoned that cause of action.

the parties' November 2014 Release bars the causes of action in the first amended complaint. We agree with respondent and conclude the Release bars Louis's causes of action. Because Louis attached the Release to the first amended complaint, we give precedence to the facts appearing in that exhibit over the factual allegations of the complaint. (*Moran, supra*, 3 Cal.App.5th at pp. 1145–1146.)

As noted above, the parties executed the Release seven months after execution of the Purchase Agreement. The recitations of the Release (to which Louis agreed by executing the document) indicate Louis failed to remit rental payment for November 2014. In order to keep his right of first refusal to repurchase the home and to reinstate the other provisions of the parties' leaseback agreement, Louis signed the Release. Included in the Release is a broad release of claims that includes any known or unknown claims between the parties. Thus, whether or not Louis knew of his alleged causes of action against respondent at the time of the Release, they are encompassed by the Release and have been relinquished.³

Finally, Louis argues the trial court should have granted him leave to file a second amended complaint. We conclude, however, Louis has not carried his burden for leave to amend. Although a party, such as Louis, may seek leave to amend for the first time on appeal, it is that party's burden to “ ‘show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ ” (*Goodman, supra*,

³ We note, however, that other than being attached to the first amended complaint, the Release is not mentioned in the first amended complaint and no cause of action is based on or related to the Release.

18 Cal.3d at p. 349; see *Zelig, supra*, 27 Cal.4th at p. 1126.) In asking that we grant him leave to file a second amended complaint, Louis states simply that he “can amend his complaint, if necessary, to more specifically allege the intent of the parties to the transaction.” This single conclusory statement, however, is insufficient to satisfy his burden. Additionally, Louis does not address, let alone explain, how he could amend his pleading to escape the effect of the Release.

Because we conclude the Release bars Louis’s causes of action against respondent and he has not demonstrated how he could successfully amend his pleading to state a cause of action, we need not and do not reach his contentions that he adequately stated a cause of action for fraud or that the Purchase Agreement was intended to be a loan agreement.

DISPOSITION

The judgment is affirmed. W Partners, LLC is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.