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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MANEVA A. CURRIE,

Plaintiff and Appellant,

v.

US BANK NATIONAL ASSOCIATION
et al.,

Defendants and Respondents.

B234657

(Los Angeles County Super. Ct.
No. SC108184)

APPEAL from the judgments of the Superior Court of Los Angeles County,
Elizabeth A. White, Judge. Affirmed in part and reversed in part.

Maneva A. Currie, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, Jonathan D. Fink and Magdalena D. Kozinska for
Defendant and Respondent US Bank National Association.

Parker Stanbury and John D. Barrett, Jr., for Defendant and Respondent Parker
Stanbury LLP.

Plaintiff and appellant tenant Maneva A. Currie appeals from two judgments of dismissal following orders sustaining demurrers without leave to amend in favor of US Bank National Association and the law firm Parker Stanbury LLP in this action arising out of a residential property foreclosure. Currie contends that if given leave to amend, she could allege sufficient facts to state causes of action against US Bank, as the principal of One West Bank, FSB FKA Indymac Bank FSB, and Parker Stanbury. We conclude Currie has not demonstrated that she can allege any cause of action against US Bank, but we agree that a breach of contract cause of action can be alleged against Parker Stanbury. Therefore, we affirm the judgment as to US Bank but reverse as to Parker Stanbury with directions.

BACKGROUND

Facts Alleged in the Operative Complaint

On April 1, 2009, Currie rented a house in Los Angeles for a term of two years and a monthly rent of \$750. She lived in the house with her adult child Miranda White and her two minor children. A single man rented the detached garage unit on the rear of the property from the owner. In July 2009, One West purchased the house at a foreclosure sale.

Currie learned of the foreclosure when she came home on July 15, 2009, and found a “cash for keys” notice posted on her front door and window.¹ Amir Azmi was the realtor listed on the notice. Currie called Azmi and arranged a meeting on July 23, 2009. However, a different realtor came to the house for the meeting and requested that Currie move out in 30 days. Currie was familiar with her tenant rights under the recent federal legislation known as the Protecting Tenants at Foreclosure Act of 2009 (PTFA)

¹ “Cash for keys” is a notice offering to pay tenants an amount of money to vacate the property.

(Pub.L. No. 111-22 (May 20, 2009) 123 Stat. 1661.² She explained her rights to the realtor and said it would be difficult for her to move within 30 days, but she would begin looking for housing immediately. The realtor took pictures of the house and discussed Currie's concerns about habitability issues. Based on the conversation, Currie thought that she needed to move. The realtor scheduled a second appointment but failed to come back.

On August 6, 2009, One West informed Currie of the rights provided to tenants under the Los Angeles Rent Stabilization Ordinance. The bank requested that Currie submit an occupancy form, a copy of her lease agreement, and rent receipts. Currie submitted the form to One West listing all of the occupants of the house, describing the lease terms, and identifying her concerns about habitability.

On November 10, 2009, Currie contacted One West's attorney at the law firm of Robert J. Jackson and Associates with the information that she had located a prospective residence. The attorney said Currie was not being asked to move and was not given notice of a request to move. However, the attorney asked Currie to submit a written request for relocation costs along with the prospective residential lease.

On November 16, 2009, Currie received a notice to cure or quit which stated that she had failed to provide access for the purpose of inspections, repairs, and showing the unit to prospective buyers. However, Currie had not failed to provide access.

² The PTFA provides protection to tenants of residential property in two ways. First, an owner who acquires the property through foreclosure must provide a bona fide tenant with at least 90 days' notice to vacate. (See Pub.L. No. 111-22, § 702(a)(1), (a)(2), 123 Stat. 1661.) Second, if a bona fide lease was entered into before the notice of foreclosure, then the lease is not terminated, and the successor in interest takes the property subject to the tenant's rights under the lease to occupy the premises until the end of the remaining term of the lease. (*Id.*, § 702(a)(2)(A), 123 Stat. 1661.) The only exception is if the new owner sells the property to a purchaser who will occupy the premises as his primary residence. Under those circumstances, the successor in interest may terminate the lease on the day of the sale but must still provide the tenant 90 days' notice to vacate. (*Ibid.*)

On November 18, 2009, Currie signed a lease to move to a new residence on January 1, 2010, contingent upon receipt of \$6,000 from One West. Currie faxed documents to One West's attorney the following day. Despite multiple telephone calls in which she left messages, she never heard from the attorney.

On December 10, 2009, Currie spoke with Azmi. She asked him to assist her to obtain at least \$4,000 for her relocation costs. However, One West denied Azmi's request.

On January 25, 2010, Currie contacted Pre-Paid Legal Services, Inc., (PPLS) for assistance in getting her relocation costs paid. She has a membership with PPLS under which she pay monthly dues. The benefits of the membership contract are provided by attorneys designated by PPLS, referred to as provider attorneys. Under the terms of the membership contract with PPLS, Currie receives unlimited telephone consultations to the extent necessary to advise her, as determined by the provider attorney. If the provider attorney, in his or her sole discretion, determines that a telephone call or letter would assist Currie, the first letter or telephone call is performed at no charge. Currie is also entitled to two letters or telephone calls on business legal matters. Any additional telephone calls or letters from the provider attorney are provided at a discount of 25 percent from the provider attorney's standard hourly rate. The contract also contains provisions for specific types of legal actions.

PPLS referred Currie to the provider law firm Parker Stanbury. Parker Stanbury assigned Attorney Matthew May to her matter. May asked Currie to fax the information for One West's attorney in order that May could write a letter on Currie's behalf. Currie provided the information that day. When Currie did not receive a copy of the letter, she contacted May. May said that he had called One West's attorney instead and they discussed relocation costs and habitability issues.

On February 4, 2010, One West served Currie, White, and the minor children with a three-day notice to pay rent or quit. The notice stated that Currie had not paid her rent since August 2009. Currie contacted May. He asked her to fax the notice to him in order

to discuss it with her effectively. Currie asked him again to write a letter to One Bank. May requested a letter authorizing him to write to One West on her behalf.

Benedict Garcia, who was the new real estate agent for One West, contacted Currie and discussed the notice to pay rent or quit. Currie explained that she had never been told that she was not being relocated.

On February 5, 2010, Currie faxed the notice to pay rent or quit to May. She provided a letter which authorized him to request repairs and listed the conditions at the house. She stated that she had believed One West would pay her costs to relocate, but then she received the three-day notice to pay rent or quit. She stated her preference for One West to buy out her lease, which went through March 2012. On February 8, 2010, Currie called May again to discuss the notice. He told her that in his view, several legal violations were plain from the face of the notice.

Currie provided a letter to Garcia which had been requested by One West in order for Currie to receive relocation costs. The letter stated the date that she would vacate the premises and the location of the place that she was moving. She also provided May's contact information.

On February 16, 2010, One West filed an unlawful detainer action against Currie, White, and the minor children. On February 21, 2010, Currie found a copy of the unlawful detainer action on her front porch. On February 23, 2010, Currie filed an answer to One West's unlawful detainer action for herself and her children. Apparently, she was represented by a different attorney in this proceeding, because the attorneys that PPLS referred her to were too expensive.

The next day, Currie received a stipulation in the mail from One West offering \$6,000 in exchange for Currie to vacate by March 18, 2010. However, the offer did not give Currie enough time to find another residence. On March 17, 2010, the man living in the rear unit on the property relocated.

On March 23, 2010, Currie received an entry of default. When Currie appeared on April 12, 2010, in connection with the unlawful detainer action, she learned that One West was dismissing the case.

Garcia came to the residence without notice on April 6, 2010. On April 15, 2010, one of Currie's minor children was served a notice to vacate the rear unit on the property within five days or One West would proceed with forcible entry and detainer proceedings. The process server explained the notice to the child.

On April 20, 2010, Currie contacted May to discuss the notice to vacate. She requested that May write a cease and desist letter to One West. She explained that the ongoing actions were making her ill. May told her that a cease and desist letter was not appropriate and forcible entry proceedings could not begin prior to service of a summons and complaint. Currie asked May for a letter explaining why he had not sent a letter to One West on her behalf as she had requested. He told her that they would talk about the letter after she spoke with the attorney representing her.

On April 21, 2010, a notice of intent to enter the main house was posted at the property to allow One West to cure code violations set forth in a notice of violation issues by the County of Los Angeles, Department of Public Health. On April 22, 2010, Currie filed a complaint with the Office of the District Attorney, Consumer Protection Division about One West's practices. On April 26, 2010, Garcia told Currie that he met with One West's attorney, explained that she had been ignored and had lost her prospective residence. Garcia told her that One West's attorney again offered \$6,000. Currie told him that she had been forced to take legal action against One West.

On April 28, 2010, Currie spoke to May by telephone. In this conversation, May was adamant that he had never said he spoke to anyone at the law firm representing One West. He explained that someone else in his office had spoken to someone at the other law firm. Currie asked why he did not write the promised letter. To end the conversation, May offered to write a letter to One West describing their legal violations in order to settle the matter. He asked for a letter from Currie giving him authority to do so. Currie asked for a letter explaining why he did not send the original letter to One West that she had requested. May stated that his office did not provide such letters. Currie received a postcard from May's office stating that materials requested in order to provide her additional legal services had not yet been received.

Currie began to think that May was not working in her best interest or pursuant to the PPLS contract. On May 2, 2010, a notice to cure or quit the main house was placed on her front porch concerning access to cure code violations. A representative from One West arrived at the house on May 6, 2010. The One West representative took pictures and referred to a document with information about the habitability of the premises. Garcia, construction workers, real estate agents, and property management employees surprised her with unscheduled visits, or scheduled visits and failed to show up.

On May 8, 2010, Currie received copies of unlawful detainer actions filed by One West as to the rear unit on the property. Currie filed an answer. Prowlers tried to break into a building on the property and someone broke into her car the following night. On May 20, 2010, Currie heard from an Environmental Health Specialist at the County of Los Angeles Department of Public Health. The specialist said he had met with One West concerning repairs to the house. One West claimed that Currie was not available for repairs, which she denied. An unknown person watched and followed her, but later went into a neighbor's home. Currie has not been able to return to work due to stress.

Procedural Background

On May 27, 2010, Currie and White filed a complaint which is not part of the record on appeal. On July 6, 2010, One West obtained a judgment against Currie and White for possession of the rear unit on the property.

On December 13, 2010, Currie brought an ex parte application regarding discovery based on newly discovered facts. She attached a deed that was filed with the County Recorder's Office on September 18, 2009, entitled "Corrective Trustee's Deed Upon Sale." The deed showed the property at issue was conveyed to US Bank, as trustee for a trust fund. The deed also showed that a copy of the corrective deed was sent to One West. The deed also stated, "This Trustee's Deed Upon Sale is being recorded to correct the Vesting Information on the Trustee's Deed Upon Sale that recorded on 7/21/2009"

On December 14, 2010, Currie, White, and the minor children filed the operative verified second amended complaint against One West, Garcia, PPLS, Parker Stanbury, May, and Doe defendants. The complaint alleged the following causes of action: wrongful forcible entry and detainer proceedings, breach of the covenant of quiet enjoyment, fraud and deceit, and injunctive relief against One West and Garcia; unlawful eviction proceedings, discrimination, defamation, landlord retaliation, quiet title, and declaratory relief against One West only; breach of contract against One West, PPLS, Parker Stanbury, and May; legal malpractice against Parker Stanbury and May; unfair competition; and intentional and negligent infliction of emotional distress against “all defendants.” That same day, Currie filed an amendment substituting US Bank as a Doe defendant.

Garcia filed a demurrer to the second amended complaint on December 23, 2010. One West filed a demurrer on January 19, 2011, on the ground that Currie had failed to state sufficient facts to support any of her causes of action. On January 21, 2011, PPLS filed a demurrer as well. Currie opposed all three demurrers.

On January 27, 2011, Currie requested the trial court take judicial notice of certain documents, including the corrective deed and letters from US Bank. She submitted a copy of a letter dated January 7, 2011, from an attorney representing US Bank written to the tenants of the main unit on the property. The letter stated that US Bank had completed the foreclosure sale of the property on July 13, 2009, and the tenants should cease making rental payments to the previous landlord or management company. US Bank requested that the tenants provide information about the lease, proof of rent payments, and names and contact information for all occupants. US Bank instructed the tenants to contact Garcia about maintenance issues or emergencies. The trial court granted Currie’s request for judicial notice as to the deed, but not as to the letters.

A hearing was held on the demurrers of Garcia, One West, and PPLS on February 14, 2011. Currie was unable to appear at the hearing due to illness or anxiety. The trial court found that Currie’s lease was extinguished by the foreclosure sale, and therefore, no landlord-tenant relationship existed between One West and Currie. The trial

court sustained the demurrers filed by One West, Garcia, and PPLS without leave to amend and granted a motion to strike White and the minor children from the second amended complaint.

On March 22, 2011, Parker Stanbury filed a demurrer to the second amended complaint on the following grounds: Currie's children should be stricken as plaintiffs; the factual allegations revealed that Parker Stanbury complied with the contract; no unlawful, improper, or actionable conduct had been alleged; the causation alleged was speculative; and the emotional distress claims failed to allege a duty of care or outrageous conduct.

On April 1, 2011, US Bank filed a demurrer to the entire complaint for failure to state facts sufficient to constitute a cause of action. On April 20, 2011, Currie filed amendments to the second amended complaint substituting Sergeant T. O'Gorman and Robert J. Jackson & Associates, Inc., as Doe defendants. Currie did not file any opposition to the demurrers of US Bank or Parker Stanbury.

A hearing was held on US Bank's demurrer on May 23, 2011. US Bank argued that One West had been a proper entity, the complaint did not allege that One West did anything improper, and judgment had been entered in favor of One West. US Bank also argued that One West's interest in the property by way of foreclosure had wiped out the lease agreement. The trial court agreed, "The law is very clear on this. The lease is subordinate to the deed of trust. . . . The lease was entered into in 2009 Having been entered into after the deed of trust, it is subordinate, and it is extinguished by the foreclosure sale. [¶] That's the law. There's nothing that the court can do to make it any different." The trial court sustained US Bank's demurrer without leave to amend. The trial court also sustained Parker Stanbury's demurrer without leave to amend. The trial court entered judgment in favor of US Bank on June 7, 2011. Currie received notices suggesting that judgments had been entered in favor of US Bank and Parker Stanbury on June 7, 2011. Currie filed a timely notice of appeal from the June 7, 2011 judgment. A judgment of dismissal as to Parker Stanbury was entered on September 23, 2011.

Additional Allegations on Appeal

On appeal, the parties agree that Currie could amend the complaint to allege One West acted on behalf of US Bank. Respondent US Bank concedes that One West was a loan servicer acting on behalf of US Bank. Currie also represents that her former neighbor who had lived in the rear garage unit received \$18,300 to relocate. At oral argument, Currie stated that she never paid rent to One West after the foreclosure sale. She stated that she was displaced when construction forced her and her family to vacate the premises on November 19, 2010, and they never returned to the property. However, US Bank asserted that Currie occupied the property for the entire lease term and several months beyond, until US Bank filed a successful unlawful detainer action.

DISCUSSION

Standard of Review

“A demurrer tests the sufficiency of the complaint as a matter of law; as such, it raises only a question of law. [Citations.]’ [Citation.] Thus, the standard of review on appeal is de novo. [Citation.] ‘In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. “We treat the demurrer as 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.” [Citations.] 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.]’ [Citations.]” (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.)

“However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of

discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]” (*Aubry v. Tri–City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.)

Causes of Action Against US Bank

Currie contends that if given leave to amend, she could allege causes of action against US Bank based on the actions of its agent One West. We conclude that no basis for a cause of action has been shown.

It is true that “[a] lease which is subordinate to the deed of trust is extinguished by the foreclosure sale. [Citations.]” (*Dover Mobile Estates v. Fiber Form Products, Inc.* (1990) 220 Cal.App.3d 1494, 1498.) However, “The Federal [PTFA] enacted May 20, 2009, requires any owner who acquires property through foreclosure to give any existing bona-fide *residential* tenant at least 90 days written notice to vacate the premises, irrespective of whether the lease is ‘at will’ under state law and irrespective of whether there is a written lease. In addition, the tenant may occupy the premises through the balance of the lease term unless the owner or the person to whom the owner sells the foreclosed property will occupy the property as his or her primary residence.” (7 Miller & Starr, Cal. Real Estate (3d ed. 2011-2012 supp.) § 19:59.10, p. 5, fn. omitted.)³

Other than the occupancy rights provided by the PTFA, ““[t]he legal rights of the lessee were extinguished by the proceedings in the foreclosure suit and sale following the decree thereon. . . . The relation between the purchaser and tenant is that of owner and trespasser, until some agreement, express or implied, is made between them with reference to occupation.”” [Citation.]” (*Dover Mobile Estates v. Fiber Form Products,*

³ Federal district courts have held the PTFA (Pub.L. No. 111–22, § 702, 123 Stat. 1632) did not create a federal private right of action or a basis for federal subject matter jurisdiction. (*Nativi v. Deutsche Bank Nat’l Trust Co.* (N.D.Cal. 2010) 2010 U.S. Dist. 51697.)

Inc., supra, 220 Cal.App.3d at p. 1499.) If the tenant pays rent to the new owner, a new month-to-month tenancy is created. (*Id.* at p. 1501.)

The protections of the PTFA appear to apply to Currie's occupancy of the property. However, because she never paid any rent after the foreclosure sale, no new tenancy was created between Currie and the new owner. The parties did not have landlord-tenant obligations to one another. Therefore, Currie cannot maintain a cause of action against US Bank for a violation of duties as a landlord or under a lease agreement. It appears that Currie can allege a contract to pay relocation expenses, but she cannot maintain a breach of contract action, because she has no damages as a result of the breach. The real estate agent for One West and US Bank offered to pay Currie's reasonable relocation expenses to vacate the property. Currie accepted the offer by finding new housing, signing a new lease agreement upon receipt of relocation funds, and submitting the information to One West for payment. One West did not provide the requested relocation assistance. However, Currie has not shown that she suffered any economic damages as a result, since she did not incur any relocation expenses, continued to live at the property, and never paid any rent to One West. Currie has not demonstrated that she could allege any cause of action against US Bank as a result of the actions of its agent One West. Therefore, we deny the request for leave to amend the complaint as against US Bank.

Causes of Action Against Parker Stanbury

It appears that Currie can amend her complaint to allege a breach of contract action against Parker Stanbury. The breach of contract action alleged in the operative complaint is based on the contract between Currie and PPLS, to which Parker Stanbury was not a party. However, it is clear that Parker Stanbury entered into an agreement with either PPLS or Currie to provide the services described in the membership agreement. Parker Stanbury assigned May to provide the services required under the agreement. In January 2010, May, in his discretion, determined that a letter or telephone call to One

West's attorney would assist Currie. No letter was written, however, and a phone call was made by someone other than May. Currie alleges that the telephone call which May arranged, but did not make personally, did not satisfy the requirements of the contract under the circumstances. In addition, once May determined that a letter or phone call would assist Currie, she should have received additional telephone calls and letters at a discount of 25 percent. It appears that Currie can allege she was damaged by May's failure to provide the services stated in the contract in the amount that she paid for the PPLS contract.

In addition, it appears that Currie can allege a cause of action for legal malpractice. Her allegation is that once May exercised his discretion and determined that a phone call or letter would assist her, the actions that he took fell below the standard of care for legal services. Currie should be allowed leave to amend to allege causes of action for breach of contract and legal malpractice against Parker Stanbury based on May's actions.

However, Parker Stanbury's demurrer was properly sustained as to intentional and negligent emotional distress. "[A] plaintiff suing for legal malpractice may not, as a general rule, recover emotional distress damages. (See, e.g., *Pleasant v. Celli* (1993) 18 Cal.App.4th 841, 853–854 [no emotional distress damages based on attorney's failure to timely file civil action]; *Camenisch v. Superior Court* (1996) 44 Cal.App.4th 1689, 1697–1698 [no emotional distress damages for erroneous estate planning advice]; *Merenda v. Superior Court* (1992) 3 Cal.App.4th 1, 9–11.)" (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1137.) The garden variety legal malpractice allegations of the complaint do not support a cause of action for intentional or negligent emotional distress.

DISPOSITION

The judgment against US Bank is affirmed. The judgment against Parker Stanbury is reversed and the order sustaining the demurrer of Parker Stanbury is reversed. The trial court is directed to enter a new and different order sustaining the demurrer of

Parker Stanbury with leave to amend as provided in this opinion. The parties are to bear their own costs on appeal.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.