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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

A PLUS FABRICS, INC., et al., Plaintiffs and Appellants, v. YATES & ASSOCIATES INSURANCE SERVICES, et al., Defendants and Respondents.	B260767 (Los Angeles County Super. Ct. No.BC534483)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael J. Stern, Judge. Affirmed in part, reversed in part.

Brentwood Legal Services and Steven L. Zelig for Plaintiffs and Appellants.

Musick, Peeler & Garrett, David A. Tartaglio and Laura Kim for Defendant and Respondent Covington Specialty Insurance Company.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Ernest Slome, Brittany H. Bartold and Joseph C. Campo for Defendant and Respondent Yates & Associates Insurance Services, Inc.

INTRODUCTION

Plaintiffs, A Plus Fabrics, Inc., Tishbee's, LLC, and Elliot Tishbi appeal from an order of dismissal following the trial court's ruling sustaining a demurrer brought by defendant Yates & Associates Insurance Services, Inc. (Yates) to Plaintiffs' complaint. Plaintiffs' complaint alleged that Yates was liable for the fraudulent actions of the retail insurance broker due to their agency relationship. We reverse because agency is an allegation of ultimate fact sufficient to avoid demurrer and Plaintiffs sufficiently stated claims for fraud, negligent misrepresentation, negligence, and breach of contract. We also conclude that the trial court properly sustained the demurrer as to the procurement of money under false pretenses cause of action but erred in not granting leave to amend.[1]

FACTS AND PROCEDURAL BACKGROUND

1. The Insurance Contract

Plaintiffs operated a fabric business at various locations, including 3135 East 12th Street, Los Angeles, California, where fabrics, materials and other inventory were housed. Prior to September 2012, Plaintiffs had a 10-year relationship with Shana Insurance Services and its principal, Albert Kevakian (collectively, Shana). Shana was the retail insurance broker, who "would counsel Plaintiffs as to their insurance needs" and "would

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[1] Although Plaintiffs filed a notice of appeal with respect to the trial court's order against Covington Specialty Insurance Company, Plaintiffs failed to name Covington as a respondent or make any argument involving Covington. We therefore affirm the trial court's order sustaining the demurrer without leave to amend as to Covington.

review Plaintiffs [*sic*] insurance portfolio on a regular basis and make sure that proper policies and coverages were in effect."

As the retail broker, Shana represented and worked directly with the customer seeking insurance. When Shana sought to procure coverage for Plaintiffs, Shana contacted Bass Underwriters (Bass) or Yates. Bass and Yates were both surplus lines insurance brokers that did not work directly with insureds. Rather, they communicated with the retail broker (Shana) selling the policy to the insured and worked with the insurance company issuing the policy (in this case, Century Surety Company) to assess eligibility.[2]

Throughout September 2012, Plaintiffs contacted Shana to obtain an insurance quote, but Shana failed to respond. Plaintiffs believed that Shana had the ability to bind coverage for various insurers based upon Shana's previous communications with Plaintiffs.

On October 2, 2012, Shana informed Plaintiffs that their coverage had lapsed. On October 10, 2012, Shana gave Plaintiffs an insurance application to execute, listing 3135 East 12th Street as one of the properties to be covered. The application reflected effective policy dates of October 10, 2012, to October 10, 2013, with policy limits of $600,000 for personal property and $165,000 for business income.

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[2] We note that this background information regarding the relationship between the defendants was not contained within Plaintiffs' complaint and was never alleged by Plaintiffs before or at the hearing on the demurrer. This background information was obtained from later court filings not at issue on appeal. We provide this information in the background section merely to give the reader context.

On October 12, 2012, Esteban Lopez, an employee of Yates, transmitted a quote to Shana for Plaintiffs' property with proposed coverage from three insurance companies: Burlington Insurance Company (Burlington), Century Surety Company (Century), and Covington Specialty Insurance Company (Covington). That same day, Shana transmitted the written offer for coverage to Plaintiffs and advised, " '[i]f you wish to bind coverage[,] please sign the attached forms and fax back to 818-908-9590[,] along with a copy of the check.' " (Italics omitted.)

Plaintiffs signed the forms, submitted the requested documentation, and provided a check to Shana on October 12, 2012. Shana accepted and negotiated the check that same day. Shana informed Yates that it collected the necessary premium and requested that the policy be bound as of October 12, 2012.

2. Loss and Denial of Coverage

On October 13, 2012, a theft of over $650,000 occurred at Plaintiffs' property, which Plaintiffs believed was covered by the new insurance policy. Plaintiffs did not possess the binder or the actual policy at the time of the loss. Thereafter, on October 15, 2012, Bass, on behalf of other insurance companies, generated a document confirming that insurance had been bound for Plaintiffs, which included the 3135 East 12th Street property.

On October 15, 2012, Shana transmitted a profit/loss statement to Lopez (Yates's employee) accounting for the theft, and Lopez transmitted that documentation to Century. That same day, October 15, 2012, Century sent an e-mail stating that it would not be able to honor the request to bind coverage for the theft. Thereafter, Caleb Whitehouse of Yates e-mailed Century stating, "this is going to absolutely kill us. Is there anything we

can do?" (Italics omitted.) Century confirmed its refusal to honor the bind request.

3. Plaintiffs' Lawsuit

When the insurers failed to provide coverage, Plaintiffs filed this action against the three insurance companies (Century, Burlington, and Covington), the surplus lines insurance brokers (Yates and Bass), the retail broker (Shana), and other entities that are not relevant to this appeal (collectively, Defendants). Plaintiffs alleged causes of action for: (1) fraud; (2) negligent misrepresentation; (3) procurement of money under false pretenses; (4) breach of the implied covenant of good faith and fair dealing; (5) breach of insurance contract; (6) negligence; and (7) breach of contract. All of the causes of action were alleged against all Defendants. Plaintiffs alleged each of the 12 named individuals and entities are in various agency relationships with one another. Plaintiffs alleged that Yates and Bass are agents of the insurers, Burlington, Century and Covington. Plaintiffs also alleged Shana is an agent of Burlington, Century and Covington, as well as a subagent of Yates and Bass (who in turn are general agents of Burlington, Century and Covington).[3]

The first two causes of action in the complaint were for fraud in the inducement and for negligent misrepresentation. Plaintiffs alleged Shana advised them that if they wanted coverage to be bound, they should sign forms and provide a check. Plaintiffs alleged this statement made by Shana constituted a representation that it had binding authority, and that if

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[3] The complaint is not a model of clarity as it does not specify what each defendant allegedly did with respect to each cause of action. Instead, each cause of action only discusses the "Defendants" (save Shana) in a general manner.

Plaintiffs did the things requested, coverage would be bound. Plaintiffs alleged that Shana made these promises and gave these assurances, individually and on behalf of other Defendants, including Yates and the insurance companies. They contended that having signed the offer, it became a binding insurance contract, though they do not state with which insurance company. Although Yates was mentioned by name in this cause of action, it was not mentioned by name in the subsequent causes of action.

Plaintiffs pleaded their second cause of action for negligent misrepresentation in the alternative to the first cause of action for fraud. They based their negligent misrepresentation cause of action upon the same allegations as the fraud cause of action.

In their third cause of action for procurement of money by false pretenses in violation of Penal Code sections 484 and 496, Plaintiffs alleged Defendants fraudulently appropriated property entrusted to them and knowingly by false and fraudulent pretenses or representations induced Plaintiffs to pay money.

The fourth cause of action for breach of the implied covenant of good faith and fair dealing asserted bad faith claims handling by Burlington, Century, and Covington. Plaintiffs also asserted a fifth cause of action for breach of insurance contract against all Defendants.[4]

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[4] Plaintiffs do not appeal the dismissal of the fourth and fifth causes of action as to Yates.

The sixth cause of action for negligence relates to Shana's alleged carelessness relative to the procurement of the policy. Plaintiffs asserted that if Shana lacked binding authority, Shana was negligent by specifying that it had such authority to affirm or commit to coverage.

As to the seventh cause of action, Plaintiffs alleged that "for approximately ten years, a relationship has existed between Plaintiffs and Defendants against whom this cause of action is asserted." This relationship was alleged to be the basis for an oral contract from which Defendants undertook to protect Plaintiffs, to advise and counsel Plaintiffs relative to insurance needs, to ensure that Plaintiffs were properly covered and to provide services related to insurance. Plaintiffs alleged that in return for Defendants' promises, Plaintiffs would attempt to use Defendants for all of their insurance needs. According to Plaintiffs, Defendants breached their oral and implied contract by allowing the policies to lapse and by failing to inform Plaintiffs that they lacked binding authority or authority to confirm or commit to coverage.

4. The Sustained Demurrers

Yates is the sole defendant substantively at issue in this appeal.[5] Like many of the defendants, Yates demurred to the complaint. Yates asserted that as "a wholesale insurance broker that had absolutely no [contract or] contact with, and owed no duty to, Plaintiffs," the court should sustain its demurrer without leave to amend. The court agreed and sustained Yates's

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[5] As mentioned at the beginning of this opinion, Covington was named on the notice of appeal. Nonetheless, Plaintiffs failed to brief any issue related to Covington.

demurrer without leave to amend as to the first, second, third, sixth and seventh causes of action. The court sustained the demurrer as to the fourth and fifth causes of action with leave to amend.

We note that Plaintiffs subsequently filed a first amended complaint restating the allegations in the fourth and fifth causes of action. Yates again filed a demurrer, which the court sustained. Plaintiffs also requested the court to reconsider its earlier ruling sustaining Yates's demurrer to the original complaint without leave to amend. The trial court denied the request, stating that Plaintiffs' request was untimely and that they were afforded plenty of time to bring a motion for reconsideration under Code of Civil Procedure section 1008, but failed to do so.

Plaintiffs moved for a new trial making the same arguments as to the causes of action against Yates that they made in opposition to Yates's demurrers. Yates opposed the motion for new trial asserting that Plaintiffs had not stated valid causes of action. The court denied the motion. A few days later, the trial court signed the judgment and order of dismissal in favor of Yates. Plaintiffs appeal from the judgment entered following dismissal of the action against Yates.

DISCUSSION

Plaintiffs appeal only the court's ruling sustaining the first, second, third, sixth and seventh causes of action without leave to amend. We review de novo the court's order sustaining the demurrer. (*Burns v. Neiman Marcus Group, Inc.* (2009) 173 Cal.App.4th 479, 486 (*Burns*) ["Treating as true all material facts properly pleaded, we determine de novo whether the factual allegations of the complaint are adequate to state a cause of

action under any legal theory, regardless of the title under which the factual basis for relief is stated."].) "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.' [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." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) When the demurrer "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." (*Ibid.*)

1. Agency is an Allegation of Ultimate Fact

Plaintiffs allege that Shana's misconduct (misrepresenting the policy start date and/or its authority to bind coverage) was attributable to Yates because Shana was Yates's agent. Plaintiffs allege that "S[hana] was a sub-agent of Y[ates] . . . and/or B[ass], who in turn were general agents of [Century]."

Yates challenged the complaint arguing that Plaintiffs fail to sufficiently connect Yates to the misrepresentations made by Shana. We conclude the agency allegation (which on demurrer we must accept as true) sufficiently connects Yates and Shana as the complaint repeatedly names Shana as the perpetrator of the bad acts. The "allegation of agency is an allegation of ultimate

fact and is, of itself, sufficient to avoid a demurrer." (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 376.)[6]

2. First Cause of Action for Fraud

The basic elements of fraud, giving rise to a tort action for deceit, are (1) a misrepresentation, which may take the form of a false representation, concealment, or nondisclosure; (2) knowledge of falsity; (3) intent to defraud and induce reliance; (4) justifiable reliance; and (5) resulting damage (causation). (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*); Civil Code, §§ 1709, 1710.) "Every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made." (*Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* (1976) 57 Cal.App.3d 104, 109.)

"In California, fraud must be [pleaded] specifically; general and conclusory allegations do not suffice. [Citations.] 'Thus " 'the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.' " [Citation.] [¶] This particularity

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[6] Counsel for Yates argues that this Court can look outside of the record related to the demurrer to decide whether Plaintiffs are capable of stating a claim, citing *Hills Trans. Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, 709-710 (*Hills*). Yates requests this court to take notice of evidence and argument provided in a subsequent motion for summary judgment. We decline to do so, and note that *Hills* is inapt as the court there solely took judicial notice of exhibits attached to the original, superseded complaint, as it was permitted to do, and never examined evidence and argument generated in later motions for summary judgment.

requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered." ' " (*Lazar, supra,* 12 Cal.4th at p. 645.) A plaintiff is held to a higher standard in asserting a fraud claim against a corporate defendant. "In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.' " (*Ibid*.)

First, Plaintiffs alleged a misrepresentation regarding coverage. The "Chronology" section of the complaint stated that on October 12, 2012, Kevakian of Shana sent Plaintiffs the written offer for coverage from the insurers, advised Plaintiffs that they had secured coverage for general liability insurance, business personal property, and other coverage for the property. On this date, Kevakian "and/or others from the so-called 'commercial department' of S[hana] specified: 'If you wish to *bind coverage* please sign the attached forms and fax back to *818-908-9590* along with a copy of the check.' " This statement was allegedly made in writing within an email. Plaintiffs' first cause of action for fraud incorporated these paragraphs and reiterated: Kevakian and Shana "advised Plaintiffs that if they wanted coverage to be bound, that Plaintiffs should sign certain forms and provide a check and return them to [Kevakian/Shana]. In doing so, [Kevakian/Shana] represented that they had binding authority and that if Plaintiffs did the things that were requested that coverage would be bound." We conclude this satisfies the particularity requirement for fraud regarding specifics like who, what, where, and when, and adequately places Yates on notice

regarding the allegedly fraudulent representation made by its alleged agent.

Second, Plaintiffs alleged both knowledge of falsity and intent to defraud and induce reliance. Plaintiffs alleged that "the representations, assurances, false pretenses, and suppression of material fact were communicated and/or made intentionally and/or with reckless disregard for the consequences thereof." Plaintiffs also stated, "Defendants fabricated the record and/or evidence in order to sidestep their obligation to provide benefits." In earlier sections, Plaintiffs alleged that Defendants falsified documents to avoid providing coverage.

Third, Plaintiffs alleged reasonable reliance on this misrepresentation. Plaintiffs first alleged that they "relied on the promises and assurances of [Kevakian/Shana]," in proceeding with the insurance transaction. Plaintiffs further stated that they "were reasonable in their reliance on the representations, assurances, and suppression of material fact of [Kevakian/Shana] . . . for numerous reasons, including but not limited to: [¶] A. Plaintiffs are informed and believe . . . that [Kevakian/Shana] and the entities up the agency chain[] were all licensed to do business and were in good standing in the State of California. [¶] B. There was nothing about the presentation or circumstances that put Plaintiffs on notice that [Kevakian/Shana] were not serious about binding as they had promised, and/or that they did not have binding authority. . . . [¶] C. [T]here was nothing that would have placed a reasonable person on notice that coverage would not be bound as promised or that [Kevakian/Shana] did not have binding authority."

Lastly, Plaintiffs alleged resulting damage. Plaintiffs asserted that they have or will incur expenses as a result of Defendants' failure to pay the cost of their losses under the insurance policy. Plaintiffs approximated the damages to be $765,000, plus interest, in addition to punitive damages.

Yates argues that there is no reason it would know of misrepresentations by Shana. Yet, Plaintiffs alleged that Shana was an agent of Yates. Under this agency relationship, Yates can be held responsible for Shana's misrepresentations even if Yates did not authorize the misrepresentations. "A principal who puts an agent in a position that enables the agent, while apparently acting within his authority, to commit a fraud upon third persons is subject to liability to such third persons for the fraud. The principal is liable although he is entirely innocent, although he has received no benefit from the transaction, and although the agent acts solely for his own purposes. Liability is based upon the fact that the agent's position facilitates the consummation of the fraud, in that, from the point of view of the third persons, the transaction seems regular on its face and the agent appears to be acting in the ordinary course of the business confided to him [citations]. The law reasons that where one of two innocent parties must suffer, the loss should be accepted by the principal who is responsible for the selection of the agent and for the

definition of his authority." (*Reusche v. California Pac. Title Ins. Co.* (1965) 231 Cal.App.2d 731, 736-737.)[7]

We conclude that Plaintiffs sufficiently pleaded fraud with specificity.

3. Second Cause of Action for Negligent Misrepresentation

The elements of negligent misrepresentation are "(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." (*Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243.) Negligent misrepresentation must also be pleaded with particularity. (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.)

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[7] Yates takes the position that the agency allegations are specious. Yates may have a point. In California, an insurance broker, which may include Shana, is "a person who, for compensation and on behalf of another person, transacts insurance . . . with, but not on behalf of, an admitted insurer." (Ins. Code, § 1623; see also Ins. Code, §33.) The broker is, as a matter of law, not a general agent for the insurer. (*Rios v. Scottsdale Ins. Co.* (2004) 119 Cal.App.4th 1020, 1026.) Depending on the type of licenses held by Shana and Yates, it may well be that Shana cannot be deemed an agent of Yates. However, whether the actual facts support the agency allegations of the complaint is an issue we must leave for another day.

Here, Plaintiffs incorporated the allegations regarding fraud. Thus, as stated in the fraud cause of action, the misrepresentation was made by Kevakian and Shana that Plaintiffs would receive coverage by signing certain forms and providing payment via check. Plaintiffs alleged that Shana represented it had authority to bind coverage on behalf of the other Defendants, stating that on October 10, 2012, "Plaintiffs continued to believe that [Shana/Kevakian] had the ability to enter into binding insurance contracts on behalf of insurers, based upon statements and communications [Shana/Kevakian] made to Plaintiffs. Plaintiffs relied on this representation and indication that [Shana/Kevakian] could in fact place and bind coverage." The specifics as to who, what, where, and when were pleaded as described above. Plaintiffs also pleaded in their first cause of action that Defendants made these statements with the intent to cause reliance and knowing that they were false. As detailed above, Plaintiffs listed reasons why their reliance was reasonable. Lastly, as mentioned above, Plaintiffs alleged damage in the form of losses that should have been covered by the insurance policy. We therefore conclude Plaintiffs sufficiently alleged negligent misrepresentation.

4. Third Cause of Action for Procurement of Money Under False Pretenses

Plaintiffs' third cause of action alleged procurement of money under false pretenses in violation of Penal Code sections 484 and 496. In Penal Code section 484, the legislature consolidated the criminal offenses of larceny, false pretenses, and embezzlement into a single crime of theft, i.e. unlawful taking. (*People v. Williams* (2013) 57 Cal.4th 776, 785-786.) Penal Code section 496 criminalizes the knowing receipt and withholding of

stolen property. Although the Penal Code specifically allows for a civil cause of action under section 496 by allowing victims to bring "action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees" (Pen. Code, § 496, subd. (c)), the Penal Code does not state a civil cause of action for violation of section 484.

Insufficient facts were alleged to prove that Yates knowingly received stolen property under Penal Code section 496 (the only statutory violation alleged that has a civil remedy). Nonetheless, the trial court abused its discretion in denying leave to amend. Plaintiffs' general allegations indicate that even though the cause of action failed to allege the proper facts, there is a reasonable possibility that Plaintiffs could allege the wrongful receipt and withholding of Plaintiffs' check. We therefore reverse as to the court's denial of leave to amend. (*Smith v. County of Kern* (1993) 20 Cal.App.4th 1826, 1830 ["it is an abuse of discretion to sustain a general demurrer to a complaint without leave to amend if there is a reasonable possibility the defect in the complaint can be cured by amendment"].)

5. Sixth Cause of Action for Negligence

For the sixth cause of action, Plaintiffs alleged negligence relative to policy procurement. "The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury. [Citation.] The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages." (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.)

Plaintiffs alleged duty based on a ten-year relationship that existed between Plaintiffs and Defendants, where Defendants would "procure coverage," "advise and counsel relative to insurance needs and issues," "regularly review insurance coverages, including limits, to make sure that Plaintiffs were properly protected and covered," and "provide services related to the insurance." In return, Plaintiffs would "attempt to use Defendants for all of their insurance needs" and Defendants benefited from commissions they earned from selling Plaintiffs insurance.

Yates argues these allegations are insufficient to state a duty because they describe Plaintiffs' relationship with Shana only. Contrary to Defendants' assertions, Plaintiffs' allegations were about Defendants generally and did not specifically state the 10-year relationship was solely with Shana. Moreover, the complaint clearly stated that Shana was Yates's agent. "We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111.) Plaintiffs have alleged a duty owed by Defendants, including Yates.

Plaintiffs also alleged breach of this duty to procure policy coverage when Defendants allowed the policies to lapse in mid-2012 without notifying Plaintiffs; failed to timely respond to Plaintiffs' requests for the procurement of new policies; made statements coupled with issuing documentation that appeared to constitute a binder; "falsif[ied] documents after Defendants learned of the claim"; "issu[ed] false and/or inaccurate statements or communications to Plaintiffs"; "fail[ed] to take the necessary

steps to cause the insurer Defendants to recognize that a policy was in fact in effect"; "fail[ed] to procure coverage"; "fail[ed] to properly advise and counsel relative to insurance needs and issues"; and "fail[ed] to regularly review insurance coverages, including limits, to make sure that Plaintiffs were properly protected and covered, and that coverages had not been cancelled."

Plaintiffs also asserted proximate cause and damages, stating that "[a]s a proximate result of the neglect of Defendants, Plaintiffs suffered the damages, past and in the future, described above." In previous incorporated paragraphs, Plaintiffs specified that they suffered major losses as a result of Defendants' failure to obtain insurance coverage despite Defendants' assertions that coverage would be bound as of October 12, 2012.

Plaintiffs sufficiently alleged negligence; the court erred in sustaining the demurrer on this cause of action.

6. Seventh Cause of Action for Breach of Contract

Plaintiffs' seventh cause of action alleged breach of contract relative to policy procurement. The elements of a cause of action for breach of contract are "(1) [the existence of] the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 830.)

Again, Plaintiffs incorporated much of the facts and chronology alleged at the beginning of the complaint in their first paragraph of the seventh cause of action. Plaintiffs allegedly paid money and filled out paperwork in exchange for an insurance policy to begin on October 12, 2012. (See *Skyways Aircraft Ferrying Service, Inc. v. Stanton* (1966) 242 Cal.App.2d

272, 280-281 [explaining a general agent's authority to bind the principal insurance company in insurance contracts]; Civ. Code, § 2337 ["An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself."].) The breach of this contract occurred as a result of Defendants' refusal to pay for losses incurred on October 13, 2012. Plaintiffs' alleged damages consisted of the $600,000 worth of coverage that should have been issued. Notably, Plaintiffs' specific allegations under the seventh cause of action heading did not explicitly state the elements of breach of contract. Nonetheless, we must liberally construe the complaint when ruling on a demurrer. (*C & H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1062.) When read as a whole, including the incorporated paragraphs, the complaint adequately alleged facts in support of breach of contract.

DISPOSITION

We conclude that agency is an allegation of ultimate fact sufficient to avoid demurrer and Plaintiffs sufficiently stated a claim for fraud, negligent misrepresentation, negligence, and breach of contract. Although the court properly sustained the demurrer as to the cause of action for procurement of money under false pretenses, the court erred in not providing leave to amend. The judgment is reversed. Plaintiffs A Plus Fabrics, Inc., Tishbee's, LLC, and Elliot Tishbi are awarded their costs on appeal.

We also affirm the judgment as to Covington Specialty Insurance Company. Covington is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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