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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DEBORAH MACIAS,

Plaintiff and Appellant,

v.

SANTA BARBARA RENTAL
PROPERTY ASSOCIATION,
INC.,

Defendant and Respondent.

2d Civ. No. B286492
(Super. Ct. No. 16CV05699)
(Santa Barbara County)

Deborah Macias sued Santa Barbara Rental Property Association, Inc. (SBRPA) for negligence, violation of the Consumer Legal Remedies Act (CLRA) and declaratory and injunctive relief. The trial court sustained SBRPA's demurrer to all three causes of action with leave to amend. When Macias elected not to amend the first amended complaint (FAC), the court dismissed the claims with prejudice.

Macias contends the trial court erred by dismissing her cause of action for declaratory and injunctive relief. She asserts that SBRPA is a proper party to that cause of action and that the FAC presents an actual controversy. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

SBRPA is a trade association which provides form lease agreements to landlords for use in leasing residential properties in the Santa Barbara area. On February 14, 2013, Macias entered into a one-year residential apartment lease agreement with the property owners, Dois Lent and Tad Lent. Macias alleges SBRPA supplied the form lease agreement for the transaction.

Macias maintains the form lease agreement is unlawful in that it contains a waiver of the right to a jury trial in any dispute arising out of the agreement, as well as a waiver of the landlord's liability for any injury to tenants or their property.

On February 21, 2017, Macias, on behalf of herself and all persons similarly situated, filed an FAC alleging (1) breach of contract, (2) fraud, (3) negligence, (4) breach of warranty of habitability, (5) violation of CLRA (Civ. Code, § 1750 et seq.), (6) violation of the Unfair Business Practices Act (Bus. & Prof. Code, § 17200 et seq.), (7) negligence, (8) violation of CLRA (Civ. Code, § 1750 et seq.) and (9) declaratory and injunctive relief. The first through sixth causes of action are asserted against the Lents. The seventh, eighth and ninth causes of action are asserted against the Lents and SBRPA. SBRPA demurred to those causes of action.

The trial court sustained SBRPA's demurrer. It determined the negligence claim fails because there is no allegation of any loss, injury or damage as a result of SBRPA's

conduct. The court further concluded CLRA does not apply to Macias's lease agreement or to the lease agreements of any of the purported class members. As to the declaratory relief claim, the court found there was no "actual controversy between the parties that requires judicial intervention." It also noted "there is nothing for the court to enjoin. Macias asks for an injunction declaring that the jury and liability waiver provisions in her lease are invalid . . . , but she does not allege anywhere in the FAC that either of these lease provisions has been enforced against her, or that she has been injured or damaged as a result of the provisions."

The trial court granted leave to amend, but observed "it is unclear how [Macias] will be able to amend her complaint to show that a duty of care was owed to her by SBRPA or that she suffered any injury or damages." When Macias failed to amend the FAC, SBRPA filed a motion to dismiss. Macias responded that she had nothing further to add to the FAC. The court granted SBRPA's motion and dismissed the matter with prejudice. Macias appeals.

DISCUSSION

Macias informs us that "[f]or the purposes of this appeal, [she] only challenges the trial court's sustaining of the demurrer as to the declaratory relief cause of action." We therefore limit our discussion to that cause of action, which also includes a claim for injunctive relief.

Standard of Review

The judgment on an order sustaining a demurrer is reviewed de novo. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) We treat the demurrer as admitting all material facts properly pleaded, but not

contentions, deductions or conclusions of fact or law. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Where, as here, the plaintiff elects not to amend the complaint, it is presumed the complaint states as strong a case as is possible. (*Hooper v. Deukmejian* (1981) 122 Cal.App.3d 987, 994.) The judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised in the demurrer. (*Ibid.*)

Declaratory Relief

Macias contends the trial court erred by sustaining the demurrer to her claim for declaratory relief. SBRPA responds that the FAC fails to meet the standards necessary for such a claim. We agree with SBRPA.

California's declaratory relief statute states: "Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be

had before there has been any breach of the obligation in respect to which said declaration is sought.” (Code Civ. Proc., § 1060.)¹

“It is the general rule that in an action for declaratory relief the complaint is sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties *of the respective parties under a contract* and requests that the rights and duties be adjudged.” (*Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 549-550, italics added; accord *Southern Counties Gas Co. v. Ventura Pipeline Constr. Co.* (1971) 19 Cal.App.3d 372, 377; *City of Tiburon v. Northwestern Pac. R.R. Co.* (1970) 4 Cal.App.3d 160, 170.) “The very purpose of an action for declaratory relief is to set at rest the unsettled questions which have arisen in the attempts of the contracting parties to interpret their written agreement.” (*Ralphs Grocery Co. v. Amalgamated Meat etc.* (1950) 98 Cal.App.2d 539, 542; *Associated Cal. Loggers, Inc. v. Kinder* (1978) 79 Cal.App.3d 34, 43 [“Declaratory relief is the traditional method by which parties to a contract can have their rights in the contract determined”]; see *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 52.)

Here, it is undisputed that Macias’s lease agreement is with the Lents, not with SBRPA. But “[s]ection 1060 does not require the existence of a legal instrument between parties as a predicate for declaratory relief.” (*Siciliano v. Fireman’s Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 753.) Rather, “[t]he law allows any party with an interest in a contract to pursue a declaration of rights as to that instrument when an actual controversy exists.” (*Market Lofts Community Assn. v. 9th Street Market Lofts, LLC*

¹ All statutory references are to the Code of Civil Procedure unless otherwise specified.

(2014) 222 Cal.App.4th 924, 932 (*Market Lofts*).) Hence, a party may be named in a declaratory relief action if that party's presence is necessary to a declaration of rights under a contract, even if that party is not a signatory to the contract. (E.g., *Market Lofts*, at pp. 931-932 [homeowners association was a proper party to action seeking declaration of rights under license agreement between two developers because it was a directly named beneficiary under that agreement]; *Empire Redwood Co. v. Hall* (1958) 161 Cal.App.2d 823, 829 [signatory's lessee was a proper party to declaratory relief action seeking interpretation of a contract].)

Macias has not demonstrated that SBRPA's presence is necessary to a declaration of rights under the lease agreement between Macias and the Lents. SBRPA is not a third party beneficiary under the lease. It drafted a form lease subsequently used by the parties. Macias's request that the court rule on the "legality" of the lease does not require SBRPA to be a party to the lawsuit. In other words, a declaration of Macias's rights under the lease does not require that SBRPA be a party to the action. As the trial court aptly observed, "SBRPA . . . is not a party to the lease agreement between the Lents and [Macias] . . . , nor is it a party to the lease agreements between the Lents and members of the proposed class, even if it provided the lease form to the Lents. SBRPA, therefore, owes no duty to [Macias] and the proposed class that would be subject to judicial review."

Thus, while Macias may be entitled to declaratory relief to settle disputes as between herself and the Lents under the lease agreement, she is not entitled to declaratory relief as against SBRPA. Section 1060 provides for declaratory relief in cases of actual controversy relating to the legal rights and duties of the

respective parties. It does not provide for the settlement of disputes between the plaintiff and persons or entities having no interest in the contract.

Macias points to *Meyer v. Sprint Spectrum, L.P.* (2009) 45 Cal.4th 634, to support her argument to the contrary. That case is distinguishable, however, because it involved the actual parties to the contract at issue. (*Id.* at p. 648.) The suit was not against a party with no apparent interest in the contract. (*Ibid.*)

In addition, Macias has not shown that there is an “actual controversy” involving SBRPA that requires judicial intervention. (§ 1060; *Market Lofts, supra*, 222 Cal.App.4th at p. 932.) A threshold requirement for declaratory relief is the existence of a justiciable dispute. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 813.) One requirement for a justiciable controversy is ripeness: there must be a dispute between adverse parties on a specific set of facts that has reached the point that an invasion of one party’s rights is likely unless the court orders relief and enters a conclusive judgment declaring the parties’ rights and obligations. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-171; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606-608.)

The factual allegations of the FAC do not support a finding of a justiciable controversy with respect to SBRPA. Although Macias seeks a “declaration as to [the lease terms] legality,” she has not alleged that either SBRPA or the Lents have taken steps to enforce the allegedly illegal terms of the lease agreement. Nor does the FAC indicate that SBRPA or the Lents have threatened to do so. To the contrary, Macias claims “there is no dispute that there are illegal terms in the lease,” and that “[t]he issue is only

whether and how those issues can be presented to the court.” If no dispute exists, however, there is no need to present the issues to the court. In other words, there is no actual controversy for the court to decide. (See § 1060; *Market Lofts, supra*, 222 Cal.App.4th at p. 932.)

Declaratory relief is not available to provide judicial answers to theoretical, hypothetical or academic questions. (*Wilson v. Transit Authority of Sacramento* (1962) 199 Cal.App.2d 716, 722-724.) It is not the court’s role to provide advisory opinions; and at this point, any ruling by the trial court as to the legality of the challenged terms would be purely advisory. (*Ibid.*) We conclude the trial court did not err by sustaining the demurrer to Macias’s declaratory relief claim.

Injunctive Relief

In addition to requesting declaratory relief, the ninth cause of action seeks injunctive relief. Specifically, Macias requests “[a]n injunction, enjoining the acts and omissions alleged.”

“An injunction properly issues only where the right to be protected is clear, injury is impending and so immediately likely as only to be avoided by issuance of the injunction. [Citation.]” (*East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1126.) As previously discussed, there is no allegation that either SBRPA or the Lents are attempting to enforce the allegedly illegal lease terms against Macias or anyone else. Hence, the FAC does not allege facts demonstrating that injury is impending and that an injunction is necessary to prevent that injury.

Furthermore, injunctive relief is a remedy, not a cause of action, and requires an underlying cause of action. (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623; see

City of South Pasadena v. Department of Transportation (1994) 29 Cal.App.4th 1280, 1293 [“A permanent injunction is merely a remedy for a proven cause of action. It may not be issued if the underlying cause of action is not established”].) Because the FAC does not state a viable underlying cause of action against SBRPA, the trial court properly sustained the demurrer as to the injunctive relief claim.

DISPOSITION

The judgment of dismissal is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Donna D. Geck, Judge

Superior Court County of Santa Barbara

Law Offices of Ron Bochner, Ron Bochner, for Plaintiff and
Appellant.

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