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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANITA WASHINGTON,

Plaintiff and Appellant,

v.

ABECASSIS MANAGEMENT, INC.,
et al.,

Defendants and Respondents.

B281908

(Los Angeles County
Super. Ct. No. PC055935)

APPEAL from judgments of the Superior Court of Los Angeles County, Stephen Pfahler, Judge. Affirmed.

Anita Washington, in pro. per., for Plaintiff and Appellant.

Zimmerman & Kahanowitch, Richard Kahanowitch, Victor A. Groia, for Defendants and Respondents Abecassis Management, Inc. and Aaron Abecassis.

Joseph L. Stark & Associates, Joseph L. Stark, for Defendant and Respondent Housing Authority of the City of Los Angeles, Margarita Rodriguez, and Giovana Adams.

INTRODUCTION

Plaintiff and appellant Anita Washington (plaintiff), acting pro. per., sued the Housing Authority of the City of Los Angeles (HACLA) and HACLA employees Margarita Rodriguez and Giovana Adams (collectively the HACLA defendants), as well as Abecassis Management, Inc. and Aaron Abecaccis (collectively the Abecaccis defendants), in connection with plaintiff's eviction from her apartment pursuant to a prior unlawful detainer (U.D.) action. Plaintiff now appeals from the trial court's entry of judgments¹ in favor of the HACLA defendants and Abecaccis defendants after sustaining their respective demurrers. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

I. The Unlawful Detainer Action

In July 2013, Abecassis Investments, LP (Abecassis Investments) brought a U.D. action against plaintiff. The U.D.

¹ The HACLA defendants contend plaintiff's notice of appeal fails to appeal the judgment in their favor. The Notice of Appeal states that plaintiff appeals from a "Judgment of dismissal after an order sustaining a demurrer," entered March 10, 2017. No judgment was filed on that date. Rather, on March 10, 2017, the trial court sustained the Abecassis defendants' demurrer without leave to amend. A judgment of dismissal in favor of the Abecassis defendants was entered April 14, 2017. With respect to the HACLA defendants, the trial court sustained their demurrer without leave to amend on February 17, 2017, and entered judgment in favor of the HACLA defendants on March 28, 2017. We liberally construe the notice of appeal as an appeal from both the judgments entered in favor of the HACLA defendants and the Abecaccis defendants. (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.)

complaint alleged Abecassis Investments was the owner of property for which plaintiff was a leasehold tenant and demanded possession from plaintiff because plaintiff's lease had expired. In August 2013, judgment was entered in favor of Abecassis Investments in the U.D. action.

II. The Operative Complaint

In September 2014, plaintiff initiated this action by filing a complaint against the Abecassis defendants and Allen R. King, Esq., who was counsel for Abecassis Investments in the U.D. action.² In August 2016, plaintiff filed her first amended complaint (FAC), which alleged three causes of action and named as defendants the Abecassis defendants and the HACLA defendants, as well as Progressive Apt. Management, which is not a party to this appeal.

Plaintiff's first cause of action was for general negligence and was asserted against the Abecassis defendants. Plaintiff alleged the Abecassis defendants presented a "FALSE AND MISLEADING lease/Rental Agreement, in their Unlawful Detainer Complaint" against plaintiff and "caused through their MISREPRESENTATIONS the Unlawful Detainer Court to enter a Judgment against [] Plaintiff for Writ of Possession."

Plaintiff's second cause of action was for fraud and was also asserted against the Abecassis defendants. With respect to that claim, plaintiff incorporated by reference the allegations made in support of her first cause of action for general negligence and additionally alleged that the Abecassis defendants "withheld the

² On June 6, 2016, the trial court entered judgment in favor of King, having sustained King's demurrer to plaintiff's complaint without leave to amend. King is not a party to this appeal.

actual Lease and or [sic] Rental Agreement between plaintiff and the defendants from the Judge in [the] Unlawful Detainer case.”

Plaintiff’s third cause of action was for a violation of 42 U.S.C. § 1983, and was asserted against the HACLA defendants. Plaintiff alleged the HACLA defendants “acting in their Official and Individual capacities and acting under the color of State Law knowingly and intentionally authorized and or [sic] allowed Abecassis to use false and Misleading LEASE AGREEMENT in the Unlawful Detainer Trial against Plaintiff.” Plaintiff further alleged that the HACLA defendants “allowed and or authorized defendant A[aron] Abecassis to collect three months of Rental payment when NO HACLA TENANT actually occupied the Rental Unit and or [sic] Apartment Plaintiff was LOCKED OUT of.” In addition, plaintiff alleged she “was denied a Hearing and therefore Due Process of law; Denied Freedom of Information.” Finally, plaintiff alleged the HACLA defendants breached some “Duty of Care” when “authenticating Government Records and offering them [as] evidence in a court of law as genuine and belonging.”

III. HACLA Defendants

In September 2016, the HACLA defendants filed a demurrer to the FAC, which plaintiff opposed. On March 28, 2017, the trial court entered a judgment of dismissal in favor of the HACLA defendants. That judgment states that, pursuant to a February 17, 2017, hearing on the HACLA defendants’ demurrer, “the court sustained the Demurrer without leave to amend and [the HACLA] Defendants moved for dismissal.” The record on appeal does not contain any order regarding what transpired at the February 17, 2017, hearing on the HACLA

defendants' demurrer, including the trial court's reasons for sustaining the demurrer without leave to amend. Nor does the record contain a reporter's transcript or suitable substitute for that hearing.

IV. Abecassis Defendants

In December 2016, the Abecassis defendants filed a demurrer to the FAC. Plaintiff opposed the demurrer. Plaintiff also submitted to the trial court a proposed second amended complaint (SAC). On March 10, 2017, the trial court sustained the demurrer without leave to amend and adopted its tentative ruling as its reasons for so doing.

The trial court's tentative ruling states: "Both the 1st C/A for General Negligence and the 2nd C/A for Fraud are barred under the doctrines of res judicata and collateral estoppel. By way of this action, [plaintiff] is improperly attempting to relitigate issues previously tried and decided in the unlawful detainer action on 8/5/13. [Citation.] [¶] Additionally, the negligence and fraud claims are barred by the litigation privilege because the conduct complained of by [plaintiff] occurred during the unlawful detainer litigation. [Citations.] The only exception to the application of the litigation privilege has been for malicious prosecution actions. [Citation.] Otherwise, the privilege applies even if the communication is fraudulent, perjurious, unethical if even illegal. [Citation.] [Plaintiff] has failed to include facts to show that CC 47(b)(2) applies nor does she indicate how she can plead a malicious prosecution claim against [the Abecassis defendants], who prevailed in the unlawful detainer action. [¶] The fraud cause of action is also not plead *sic* with the requisite factual specificity. [Citations.] The complaint

contains no facts as to the manner in which the alleged misrepresentations were made, the person who allegedly made them or to whom they were allegedly made. [¶] [Plaintiff] submits a proposed Second Amended Complaint with her opposition to the Motion to Strike without having made a proper motion for leave to amend. Even considering this proposed pleading, [plaintiff] has not adequately plead her claims against [the Abecassis defendants]. As such, the demurrer is sustained without leave to amend.”

Three days after the hearing on the demurrer, plaintiff filed a document, entitled “PLAINTIFF’S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES, AND ARGUMENT IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEMURRER; Alternatively, APPLICATION FOR RECONSIDERATION OF ORDER SUSTAINING DEFT’S DEMURRER.” In it, plaintiff asked the trial court to “Overrule” the Abecassis defendants’ demurrer, explaining that she wished to assert a new cause of action against them, namely, “The Tort of Abuse of Process.” Plaintiff explained that she “did not become aware of the Abuse of Process Cause of Action until 03/10/2017 when discussing her complaint, litigation and, the Court’s decision of 03/10/2015 [*sic*] . . . with a friend” The record does not contain any order or reporter’s transcript (or suitable substitute) indicating whether the trial court ruled upon or otherwise addressed the claims raised in plaintiff’s supplemental pleading.

On April 14, 2017, the trial court entered a Judgment of Dismissal in favor of the Abecassis defendants and against plaintiff.

DISCUSSION

I. The HACLA Defendants

Plaintiff contends the trial court erred when it sustained the HACLA defendants' demurrer without leave to amend. We find plaintiff has failed to satisfy her burden to demonstrate the trial court so erred. In approximately one page of argument in her opening brief devoted to discussing such purported error, plaintiff offers no cogent argument or rationale by which we could meaningfully evaluate her claim of error.³ We must accordingly affirm. (*Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1028 ["On appeal . . . from any judgment, it is the appellant's responsibility to affirmatively demonstrate error"]; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["One cannot simply say the court erred, and leave it up to the appellate court to figure out why"].) Moreover, we must affirm where, as here, plaintiff has failed to provide a copy of the order appealed from. (*Baranchik v. Fizulich* (2017) 10 Cal.App.5th

³ In her reply brief, plaintiff asserts for the first time on appeal: (1) HACLA discriminated against her based on her race; (2) the HACLA defendants failed to provide her with a hearing on the termination of "her Section 8 Housing Voucher"; (3) the HACLA defendants failed to provide her with notice that "her Section 8 Voucher was being terminated"; and (4) the HACLA defendants denied plaintiff of "the right to present objections." To begin with, these are not arguments; rather, they are allegations, of which none are contained in plaintiff's FAC. In any event, plaintiff's failure to present these contentions in her opening brief forfeits her reliance upon them. "Our review "is limited to issues which have been adequately raised and supported in [appellant's opening] brief." [Citations.]' [Citations.]" (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 290, fn. 2; see also *People v. Tully* (2012) 54 Cal.4th 952, 1075.)

1210, 1226 [“It is the burden of the appellant to produce an adequate record demonstrating trial court error”].)

II. The Abecassis Defendants

A. Standard of Review

“On appeal from a judgment after an order sustaining a demurrer, our standard of review is de novo.” (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700.) When a trial court has sustained a demurrer 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.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. Analysis

We find no error in the trial court’s decision to sustain the Abecasssis defendants’ demurrer to the first cause of action (general negligence) and second cause of action (fraud). As alleged in the FAC, the first cause of action arises from the Abecassis defendants’ purported misrepresentations and use of a false or misleading lease in the U.D. action. The second cause of action is premised on those same allegations, as well as the further allegation that the Abecassis defendants purportedly withheld the true lease in the U.D. action. Thus, all causes of action against the Abecassis defendants are premised on purported wrongdoing that occurred in the U.D. action.

Our Supreme Court has held that, as a matter of law, a plaintiff may not sustain a separate tort cause of action for

alleged misconduct occurring during the course of litigation. In *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, the Court held there was no available tort remedy to assert against a party for intentional spoliation of evidence, where that party purportedly engaged in the spoliation as party to the litigation. In so holding, the Court noted its wariness of “the dangers of creating new torts to remedy litigation-related misconduct” (*id.* at p. 9) and cited with approval numerous cases holding that no separate civil tort action for damages was available for litigation misconduct, including committing perjury while testifying, concealing or withholding evidence, or presenting false evidence or testimony (*id.* at p. 10). The Court explained that, in balancing the utility of a tort remedy for litigation-related misconduct against the burdens it would impose on our justice system, it is more sensible to place upon litigants to an action the burden of exposing bias of witnesses and falsity of evidence in the litigation in which such misconduct arises, rather than permit a litigant to attack the integrity of the evidence after the proceedings have concluded, thereby undermining the finality of judgments and spurring additional rounds of litigation. (*Id.* at p. 11.)

Here, plaintiff’s opportunity to seek redress for the purported wrongs described in her first and second causes of action was during the U.D. action. Not in the instant case. We therefore conclude the trial court was correct to sustain the Abecassis defendants’ demurrer as to these causes of action. Moreover, because such causes of action could not be sustained as a matter of law, the trial court did not abuse its discretion in declining plaintiff leave to amend.

In addition, we find that the trial court correctly sustained the Abecassis defendants' demurrer on the ground that plaintiff's first and second causes of action were barred by the litigation privilege of Civil Code section 47, subdivision 2, which immunizes a defendant from tort liability arising from communications made during judicial proceedings. (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213-216 (*Silberg*)). "[T]he privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Id.* at p. 212.)

The litigation privilege bars claims of negligence (*Silberg, supra*, 50 Cal.3d at p. 215 [citing *Pettitt v. Levy* (1972) 28 Cal.App.3d 484]) and fraud (*Silberg, supra*, 50 Cal.3d at p. 215 [citing *Carden v. Getzoff* (1987) 190 Cal.App.3d 907]). It protects against tort liability for purported misrepresentations (*e.g., Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 22-25 [false statements during settlement negotiations]) and presentation of false documents (*e.g., Steiner v. Eikerling* (1986) 181 Cal.App.3d 639, 642-643 [presenting false will in probate proceedings]). Moreover, the privilege may extend to noncommunicative acts where such acts are necessarily tied to a communicative act upon which the cause of action is based. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1059-1061 [privilege applied to noncommunicative act of levying property in execution of judgment where judgment allegedly procured by communicative act of submitting perjurious declarations].)

Here, plaintiff alleges the Abecassis defendants are liable for negligence in the first cause of action due to their purported misrepresentations and submission of a fraudulent lease.

Plaintiff's second cause of action for fraud relies upon those same allegations and merely makes the additional related allegation that, when submitting the false lease, the Abecassis defendants necessarily concealed the true lease. As to both causes of action, plaintiff claims such misconduct occurred in connection with the U.D. action for the purpose of unlawfully evicting her. The trial court therefore did not err by sustaining the Abecassis defendants' demurrer, as both the first and second causes of action are based on activity protected by the litigation privilege.⁴

Because we affirm on the above-discussed grounds, we do not reach plaintiff's arguments that her claims against the Abecassis defendants are not barred by res judicata and collateral estoppel.

⁴ Likewise, plaintiff's newly asserted claim for the tort of abuse of process arising from the U.D. action would be barred by the litigation privilege. (*Silberg, supra*, 50 Cal.3d at p. 215 ["[S]ection 47(2) has been held to immunize defendants from tort liability based on theories of abuse of process [citations]."]) We thus reject plaintiff's claims the trial court erred with respect to considering the supplemental memorandum in which plaintiff raised the prospect of her abuse of process claim.

DISPOSITION

For the foregoing reasons, the judgments are affirmed. The parties are to bear their own costs on appeal.

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KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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