

ATTACHMENT A

APPENDIX “A”

Appendix A

Courts involved in Appellants Complaint against defendants

- 1. Los Angeles County Superior Court case No. BC669432**
- 2. Court of Appeal of the Second Appellate District Division One Case No. B295836**
- 3. Supreme Court of California Case No. S263334**

Filed 6/2/20 Aguilar v. Specialized Loan Servicing CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GUILLERMINA AGUILAR,

B295836

Plaintiff and Appellant,

(Los Angeles County
Super. Ct. No. BC669432)

v.

SPECIALIZED LOAN SERVICING,
LLC, et al.,

Defendants and Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Guillermina Aguilar, in pro. per., for Plaintiff and Appellant.

Ballard Spahr, Marcos D. Sasso and Tanya M. Taylor for Defendants and Respondents.

FACTUAL BACKGROUND

Guillermina Aguilar and her husband obtained a \$115,000 mortgage to purchase their home in July 2006.¹ Following the financial crisis, the loan was sold several times in the secondary market. The servicing rights were ultimately sold to defendant Specialized Loan Servicing (Specialized).

At some time, Aguilar must have missed payments or stopped making payments on the loan altogether because her complaint alleges she was sent a notice of default by Specialized indicating they intended to foreclose.

This apparently prompted Aguilar to sue Specialized in superior court. The complaint added Wells Fargo Bank, N.A, (Wells Fargo) as the defendant note-holder. We refer to Specialized and Wells Fargo as “Defendants.” Aguilar was self-represented below. Her complaint, filed in July 2017, alleged four causes of action: (1) declaratory relief; (2) quiet title; (3) negligence and fraud; and (4) accounting.

Defendants moved for judgment on the pleadings, which the trial court granted with leave to amend. Defendants’ subsequent demurrer to the first amended complaint was sustained, again with leave to amend. The second amended complaint (SAC), the complaint operative on this appeal, alleged the same four causes of action.

Erroneously captioned “First Amended Complaint,” the SAC alleges the following facts. The loan originated with Bankerswest Funding Corporation which then sold the note to “G.M.A.C. Mortgage.” Specialized was the servicer. Specialized

¹ Only Guillermina Aguilar, and not her husband, is involved in this case.

sent Aguilar a “Notice of Default and Intention to Foreclose” identifying “two missing payments.” Aguilar requested Defendants provide her with the “Note and related loan documents,” but they allegedly refused. Aguilar claims if she was just provided with these documents she could prove Defendants do not have the legal authority to collect her monthly mortgage payments. When she contacted Specialized, they indicated another servicer “did not transfer[]” these two payments when that servicer transferred the servicing rights to Specialized. But, when she contacted the previous servicer, its representatives said they did transfer these two payments. She filed this complaint after failing to get answers from representatives from Wells Fargo.

The trial court sustained Defendants’ demurrer to the SAC. It found all causes of action were uncertain and ambiguous. The SAC pled no facts relevant to a declaratory relief or quiet title cause of action; no duty was alleged to support the negligence cause of action; no misrepresentation was alleged to support a claim for fraud; and the SAC made no changes to the uncertain and ambiguous claim for an accounting.

Aguilar timely appealed.

DISCUSSION

A. Standard of Review

This court applies two separate standards of review on appeal from a judgment of dismissal after a demurrer is sustained without leave to amend. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We first review the complaint de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory or to determine whether the trial court erroneously sustained the demurrer as a matter of

law. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) Second, we determine whether the trial court abused its discretion by sustaining the demurrer without leave to amend. (*Ibid.*) Under both standards, appellant has the burden of demonstrating that the trial court erred. (*Ibid.*) While we assume the truth of the complaint's factual allegations, we do not assume its legal conclusions. (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 810.) An abuse of discretion is established when "there is a reasonable possibility the plaintiff could cure the defect with an amendment." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

B. The Second Amended Complaint was Properly Dismissed

Aguilar's brief is hard to follow. The paragraph numbers appear arbitrary. Nor does it contain a single legal citation. While we recognize Aguilar is self-represented on appeal, she is nevertheless bound by California Rules of Court, rule 8.204(a)(1)(B) which requires each point in a brief to be supported "by argument and, if possible, by citation of authority." California Rules of Court, rule 8.204(a) is based on fairness and efficiency. It is fair because the respondent is entitled to its opportunity to answer the appellant's arguments. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840.) It is efficient because we cannot "act as counsel" for either party to an appeal and search the record to discover errors not identified by the briefs. (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742.)

A fundamental principle of appellate review will also shape the following analysis. The judgment of the lower court is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Failure to substantiate argument with legal authority

and with appropriate citations to the record can make it impossible for an appellant to “affirmatively demonstrate error on the record before the court.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822.)

As far as we can tell, the theory of Aguilar’s brief is the following. Specialized has not shown to her satisfaction it is “in fact the ‘Lien Holders in Due Course’” of her mortgage. Specialized has refused to show “the original loan documents.” Specialized is thus “trying to claim something that is not theirs.” Specialized has been collecting payments “that are not due on the loan,” because the loan was “most likely paid off by a Private Mortgage Insurance when this Mortgage Account was being served by GMAC.”

We granted Aguilar’s motion to augment the record on this appeal. One document attached to the motion is Specialized’s objection to confirmation of a Chapter 13 bankruptcy plan naming “Jose Joel Aguilar AKA Jose Talavera DBA Aguilar Clothing Business and Guillermina Aguilar” as debtors. The objection, filed in the United States Bankruptcy Court, Central District of California, attaches Specialized’s proof of claim for a debt of \$90,349.34 secured against the real property at issue in this appeal. Specialized is identified as “servicer.” Another document appears to be a photocopy of the original deed of trust recorded against the property, in the principal amount of \$115,000. A third appears to be a photocopy of a recorded “Assignment of Deed of Trust” to Wells Fargo Bank, N.A. This document appears to be electronically available (it is stamped “eRecorded”).

Aguilar submitted these documents. Her brief states: “I made the request for ‘Proof of Claim’ in hopping [sic] that my

request will help me to find the truth about this Mortgage . . .” Aguilar fails to appreciate these documents explain away the mystery of why a company called “Specialized” is attempting to collect her mortgage payments. The proof of claim she attached to her motion identifies Specialized as her mortgage’s “servicer.” Those documents also explain why her home is in foreclosure: she owes about \$90,000 on a \$115,000 mortgage and she is not current on her payments.²

With these additional facts in mind, we now review each of the SAC’s causes of action and search Aguilar’s brief to determine whether she offers reasons to rebut the presumption the trial court rightly dismissed her complaint.

Her first cause of action is for declaratory relief. Declaratory relief is available if the complaint pleads an actual controversy involving justiciable questions relating to the rights or obligations of a party. (See *Tiburon v. Northwestern P. R. Co.* (1970) 4 Cal.App.3d 160, 170.) Because Aguilar’s brief does not explain what actual controversy she asked the trial court to

² During oral argument, Aguilar claimed she possessed a document demonstrating the property was “reconveyed” to her. This surprised opposing counsel. We deferred oral argument and ordered Aguilar to supplement the record with this document and provide supporting briefing. Defendants filed responsive briefing. We have reviewed the documents Aguilar submitted as well as her briefing. They do not change our analysis. Among the documents Aguilar submitted is a document entitled “Full Reconveyance.” This document, dated January 28, 2013 and recorded February 14, 2013, states: “[The Trustee] does hereby reconvey [the property] to the person or persons legally entitled thereto” This document does not indicate the property was reconveyed to Aguilar, as she claimed during argument.

address and how a ruling from that court could settle that controversy, the trial court properly dismissed this cause of action. Aguilar's brief also does not explain what new facts a third amended complaint could allege as is necessary to show the trial court abused its discretion.

Her second cause of action is for quiet title. This cause of action was properly dismissed without leave to amend because “[a] borrower may not . . . quiet title against a secured lender without first paying the outstanding debt on which the mortgage or deed of trust is based.” (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86.) Neither the SAC nor Aguilar's briefing indicates she has paid the outstanding balance of her loan. In fact, the documents she attached to her motion to augment indicate otherwise.

Her third cause of action is for negligence and fraud. We address each separately since they are distinct causes of action.

A cause of action for negligence requires the complaint plead the existence of a duty of care, breach, causation, and damages. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529.) The SAC does not plead the existence of a duty of care.

Her cause of action for fraud also fails. A cause of action for fraud must plead the existence of a misrepresentation, made by the defendant knowing it was false; intent to induce the plaintiff to rely; justifiable reliance; and damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The SAC does not plead either defendant made a misrepresentation and nor does Aguilar's brief identify how the SAC may be cured with a third leave to amend.

Her fourth cause of action is for an accounting. A cause of action for an accounting requires a showing that some balance is

due the plaintiff that can only be ascertained by an accounting. (*Brea v. McGlashan* (1934) 3 Cal.App.2d 454, 460.) An accounting is necessary only if determining the amount owed the plaintiff is so complicated that an ordinary legal action seeking a fixed sum is impracticable. (*Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 14.) Nothing alleged in the SAC would require the equitable intervention of an accounting, and nor does Aguilar's brief argue otherwise.

We hold the trial court properly sustained Defendants' demurrer to the SAC. Moreover, Aguilar offers no new factual allegations to merit an opportunity to further amend her complaint or to demonstrate that the trial court abused its discretion. She has had two opportunities to state a viable claim against these defendants and has fallen far short of the mark.

DISPOSITION

The order dismissing the action is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED

WHITE, J.*

We concur:

CHANAY, J.

BENDIX, Acting P. J.

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

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 1

COURT OF APPEAL - SECOND DIST.

FILED

Jun 24, 2020

DANIEL P. POTTER, Clerk

JLozano Deputy Clerk

GUILLERMINA AGUILAR,
Plaintiff and Appellant,

v.
SPECIALIZED LOAN SERVICING LLC,
Defendant and Respondent.

B295836
Los Angeles County Super. Ct. No. BC669432

THE COURT:

Petition for rehearing is denied.

White

WHITE, J.*

Chaney

CHANAY, J.

Bendix

BENDIX, Acting P.J.

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

SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division One - No. B295836 SEP 30 2020

S263334

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GUILLERMINA AGUILAR, Plaintiff and Appellant,

SPECIALIZED LOAN SERVICING, LLC, et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice