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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

MARY ALYN ABAD DOMONDON, Plaintiff and Appellant, v. THREE OLIVES INC., et al., Defendants and Respondents.	B292561 (Los Angeles County Super. Ct. No. BC641464)

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

David Y. Nakatsu for Plaintiff and Appellant.

McGuireWoods, Leslie M. Werlin and Adam F. Summerfield for Defendants and Respondents.

Plaintiff Mary Alyn Abad Domondon had two mortgages on her property totaling $825,000—a first mortgage for $660,000 and a second mortgage for $165,000, both serviced by defendant Bank of America, N.A. (BofA). She fell behind on her payments, and in 2011, BofA agreed to modify her loans. She and BofA's nominal beneficiary Mortgage Electronic Registration Systems, Inc. (MERS) signed a written modification agreement that increased the first loan to $854,348.77. The agreement did not mention the second loan, but Domondon believed the modification consolidated her second loan debt into the first loan (plus late fees) and extinguished the separate second loan. She stopped receiving a separate bill for the second loan as she had in the past, and she made no further payments on the second loan.

BofA, however, never reconveyed the second deed of trust. Instead, three years after the modification, MERS assigned the defaulted second deed of trust to a third party, which eventually foreclosed on Domondon's property and evicted her.

Domondon sued BofA and MERS, as well as the parties involved in the foreclosure, alleging a host of claims based on her allegation the loans were consolidated and the second deed of trust was void. The trial court sustained a demurrer from BofA and MERS without leave to amend. Among other points, the trial court interpreted the modification agreement to encompass *only* the first loan, leaving the second loan in place.

Domondon rests her appeal almost entirely on arguing the trial court improperly resolved a factual conflict when it interpreted the modification agreement contrary to her allegations. Like her, we are troubled by the trial court's approach, which ran contrary to settled standards on demurrer. Ultimately, though, Domondon's appeal fails. Even if we assume

she is right and the trial court improperly resolved a factual conflict, BofA and MERS raise a host of *other* reasons why the demurrer was properly sustained. Domondon has not addressed many of these arguments, and in the ones she has addressed, her analysis is conclusory and unsupported. She has also made no attempt to show she should be given leave to amend. We are therefore compelled to affirm.

BACKGROUND

According to Domondon's operative second amended complaint (SAC), in 2006, Domondon took out two mortgages on her property in Los Angeles from an entity called First Franklin—a first loan for $660,000 and a second loan for $165,000. She received separate statements and made separate payments for each loan. Five years later in 2011, she experienced financial difficulties and sought a loan modification, filling out an application listing both loans and requesting they be consolidated.

By that time, BofA had become servicer for both loans. In January 2012, MERS, First Franklin, and BofA accepted the loan modification. According to Domondon's allegations, the first and second loans were consolidated into a modified first loan for $854,348.77, encompassing the first loan amount of $660,000, the second loan amount of $165,000, and "assorted late fees for [her] then delinquency." In the process, BofA told her the loans would be consolidated "and that her second loan would cease to exist." She believed this because the amount of the modified first loan was so much higher than the original first loan and actually exceeded the amount of the original first and second loans together. After the modification, BofA sent her only one "consolidated bill" and no longer sent any bills for the second

loan, as it had done in the past. The modification agreement was recorded. Domondon remained current on her payments under the modification plan until her house was sold in foreclosure.

Either intentionally or negligently, BofA, MERS, and First Franklin failed to reconvey the second deed of trust on the property after the modification. Because the second loan was extinguished, there was no security interest underlying that deed of trust, so it was now void. Nonetheless, in 2015, MERS assigned the deed of trust to another entity. That transfer eventually led to a foreclosure sale of the property and Domondon's eviction.

Domondon filed this lawsuit on November 22, 2016 against BofA and MERS, as well as the parties involved in the foreclosure.[1] A demurrer to the first amended complaint was sustained with leave to amend, but the record does not contain that complaint, the briefing on that demurrer, or the court's ruling. In the operative SAC, Domondon alleged claims for quiet title and slander of title against MERS. As against both MERS and BofA, she alleged claims for negligence; intentional and negligent misrepresentation; intentional and negligent infliction of emotional distress; violations of Business and Professions Code section 17200; promissory estoppel; and declaratory relief.

Domondon attached a host of exhibits to her complaint, including the recorded loan modification agreement. It is entitled "Home Affordable Modification Agreement" and bears the loan

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[1] Those parties were an individual named Robert Madden and two companies he owned—Trinity Financial Services and Three Olives, Inc.—which Domondon alleged fraudulently conducted the foreclosure and concealed it from BofA and MERS. Madden and his companies are not parties to the current appeal.

number for the first loan but does not mention the second loan. Paragraph 3.B. modifies the "New Principal Balance" to $854,348.77. Paragraph 3.C. states that $256,304.63 of the "Deferred Principal Balance" is eligible for forgiveness in three equal annual installments if Domondon makes timely monthly payments. The resulting "Interest Bearing Principal Balance" would be $598,044.14. Domondon alleged Paragraph 3.C. was a loan forgiveness clause for the second loan, and this "deferred principal reduction amount and write down of a second mortgage was a common practice during the housing crisis around this time."

BofA and MERS demurred to the SAC, as did the other defendants. BofA and MERS asserted a host of legal challenges to Domondon's claims and requested judicial notice of the modification agreement, among other documents.[2]

The trial court sustained respondents' demurrer without leave to amend. The court noted it had sustained a demurrer to the first amended complaint because Domondon "failed to allege any facts against BOFA or MERS that constitute a cause of action, [Domondon] could not allege proximate cause or justifiable reliance as to support her negligence and fraud claims, and [Domondon's] title related claims fail because neither BOFA nor MERS hold title to the Property or participated in the foreclosure process. [Domondon's] SAC fails to correct these defects."

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[2] Domondon did not include BofA and MERS's request for judicial notice in the record on appeal. We can glean from their demurrer that the loan modification agreement was attached to their request as Exhibit C.

Taking judicial notice of the modification agreement and other title documents, the court disregarded Domondon's allegation that the loans were consolidated and held the modification agreement "show[s] that the loan modification was as to the first mortgage only." The court said the agreement "states that it is for the 'first lien mortgage' and makes no mention of the second mortgage. As such, [Domondon's] allegation that BOFA 'consolidated' the first and second mortgages is demonstrably false." On that basis, it rejected Domondon's negligence and fraud claims based on the allegation BofA "*misrepresented* the fact that it was consolidating the two mortgages." It reasoned: "[Domondon] cannot allege that BOFA's misrepresentation proximately caused the second mortgage to go into default, or that [Domondon] reasonably relied on BOFA's purported misrepresentations because [Domondon] not only signed the loan modification agreement, it was recorded at the County Recorder's office and is part of the public record. As such, at the very least, [Domondon] had constructive notice of the fact that only the first mortgage was refinanced. Based on the foregoing, not only is [Domondon's] claim substantively deficient, given that the loan modification occurred in January 2012, it is barred by the statute of limitations."

For the "title related claims," the court held the judicially noticed documents showed neither BofA nor MERS participated in the foreclosure process, so the title claims failed. The remaining claims for emotional distress, unfair business practices, promissory estoppel, and declaratory relief failed, the court found, because they were derivative of the other claims. The court denied leave to amend because the SAC did not address the deficiencies in the first amended complaint and

Domondon failed to demonstrate how the deficiencies could be cured. The court entered judgment for BofA and MERS.

Domondon moved for a new trial, which the trial court denied. Rejecting Domondon's arguments, the court held (1) it did not improperly weigh the evidence after taking judicial notice of the loan modification agreement; (2) BofA and MERS did not hold title at the time of the foreclosure; and (3) the delayed discovery rule did not apply to render her claims timely.

DISCUSSION

I. Introduction

To place Domondon's appeal in the proper context, we briefly describe the parties' appellate briefing and Domondon's burdens as appellant.

In her opening brief, Domondon's centerpiece argument is her claim the trial court improperly weighed the conflicting evidence against her when it granted judicial notice of the loan modification agreement and found it excluded the second loan. (See *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660–661 (*Richtek*) [trial court erred in taking judicial notice of allegations in foreign complaint, which contradicted plaintiff's express allegations in complaint].) From that premise, Domondon argues each of her substantive claims is adequately pled and timely brought under the applicable statute of limitations. Many of her arguments are conclusory and unsupported by authority. She also attacks the trial court's denial of the new trial motion on the same grounds. Although she requests leave to amend, she does not address how she would amend her claims if given another opportunity to do so.

In their respondent's brief, BofA and MERS address each of Domondon's causes of action on the merits. In doing so, they

raise myriad defects that have nothing to do with the trial court's allegedly faulty finding that the loan modification agreement encompassed only the first loan and not the second. These independent grounds could (and as we explain, do) support sustaining the demurrer and denying the new trial motion. BofA and MERS also point out Domondon did not attempt to show she should be granted leave to amend.[3]

Domondon does not address any of these alternative grounds in her reply brief. Nor does she argue respondents are precluded from raising them for the first time in their respondent's brief. Nor does she show how she could amend the complaint to fix these problems. Instead, she repeats her argument the trial court improperly used judicial notice to resolve a factual conflict.

II. Domondon's Burdens as Appellant

The standards governing our review are well-settled. We review the sustaining of a demurrer de novo. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83 (*Liebert*).) We must assume the truth of well-pleaded facts and facts that can be reasonably inferred from those expressly pleaded. (*Ibid.*) We may also consider exhibits attached to the complaint and

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[3] BofA and MERS also argue we must affirm the judgment because Domondon did not include the trial court's final order sustaining the demurrer in the record on appeal. While that is true, the record contains the court's tentative ruling. In support of the motion for new trial, Domondon's counsel declared the court incorporated the tentative ruling into its final order sustaining the demurrer. BofA and MERS do not suggest counsel was mistaken or the court's ruling changed before the final order. Based on this record, we can adequately review the trial court's ruling.

facts properly subject to judicial notice. (*Richtek, supra,* 242 Cal.App.4th at p. 658.)

Even on de novo review, a plaintiff cannot simply "tender the complaint and hope we can discern a cause of action. It is plaintiff['s] burden to show either that the demurrer was sustained erroneously or that the trial court's denial of leave to amend was an abuse of discretion." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 (*Keyes*).)

As in all appeals, "the trial court's judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.] [¶] It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform the function on the appellant's behalf." (*Keyes, supra,* 189 Cal.App.4th at pp. 655–656.)

Accordingly, our review " ' "is limited to issues [that] have been adequately raised and supported in plaintiffs' brief. [Citations.] Issues not raised in an appellant's brief are deemed waived or abandoned. [Citation.]" ' " (*Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282.) This is particularly important on review from a demurrer because we must "affirm the trial court's judgment if it is correct on any theory, and on appeal, the responding parties are free to advance legal arguments that they did not raise in the trial court and which the trial court did not rely." (*L.K. v. Golightly* (2011) 199 Cal.App.4th 641, 644.) For that reason, we will not reverse the sustaining of a demurrer even if the trial court's reasoning is incorrect, so long as the judgment was correct. " 'After all, we

review the validity of the ruling and not the reasons given. [Citation.]' " (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1397.)

Finally, to obtain leave to amend, the appellant " 'bears the burden of establishing that it could have amended the complaint to cure the defect.' " (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1163 (*Daniels*).) "We review the trial court's denial of leave to amend for abuse of discretion. [Citation.] 'Where a demurrer is sustained without leave to amend, [we] must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect; if so, [we] will conclude that the trial court abused its discretion by denying the plaintiff leave to amend.' " (*Ibid.*)

We apply these rules in analyzing Domondon's specific causes of action below. As we explain, the trial court erred in making factual findings on the meaning of the modification agreement, but that error did not impact the judgment because BofA and MERS have raised independent reasons to sustain the demurrer. Domondon has not addressed most of those grounds and has failed to adequately support several of the arguments she does present. And she does not explain why she should be granted leave to amend.[4]

III. The Trial Court Improperly Resolved a Factual Dispute in Sustaining the Demurrer

The trial court interpreted the loan modification agreement's silence on the second loan as unequivocal proof it

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[4] To the extent our opinion does not address any contentions raised by the parties, including the statute of limitations issues, they are unnecessary to our decision.

covered only the first loan. In its view, the modification agreement showed Domondon's allegations that the two loans were consolidated was "demonstrably false." As noted, this alleged error is the centerpiece of Domondon's appeal.

The court's finding was erroneous. On demurrer, the court must assume the pleaded facts are true, but if there is a conflict between the allegations and the exhibits attached to the complaint, the exhibits control. (See *Liebert, supra,* 162 Cal.App.4th at p. 83; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)[5] However, if the attached exhibits are ambiguous and susceptible to the plaintiff's construction, we "must accept the construction offered by plaintiff." (*Liebert, supra,* 162 Cal.App.4th at p. 83.)

The modification agreement's silence on the second loan is ambiguous and susceptible to Domondon's interpretation. This is perhaps best demonstrated by the modified loan amount itself, which was enough to cover the first *and* second loans, plus late payments and fees. Domondon's interpretation is also supported by logic. She was a financially troubled homeowner who sought help through the modification agreement. Under the trial court's

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[5] Domondon devotes a significant portion of her appellate briefing to arguing the trial court improperly took *judicial notice* of the content and meaning of the loan modification agreement. The judicial notice issue is beside the point. She attached the modification agreement to the SAC, so it was incorporated into her allegations and the trial court could consider it in ruling on the demurrer without taking judicial notice of it. (*Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650 [" 'Where written documents are the foundation of an action and are attached to the complaint and incorporated therein by reference, they become part of the complaint and may be considered on demurrer.' "].)

interpretation, she would have been *worse off* after the modification—her first loan increased by more than $200,000 while leaving the second loan untouched, boosting her total loan debt from $825,000 to more than $1 million. If she couldn't pay the lower amount before the modification, she certainly couldn't pay the higher amount after. On the other hand, it makes sense BofA would increase Domondon's first loan to consolidate and extinguish the second loan while adding a potentially helpful forgiveness clause like Paragraph 3.C. triggered by her timely payments.

Nevertheless, this error has no impact on Domondon's appeal. We will credit her allegation the modification agreement did not mention the second loan because the second loan was being eliminated entirely and the outstanding amount consolidated into the newly modified first loan. We will also credit her allegation BofA and MERS told her the loans would be consolidated, but then they failed to reconvey the second deed of trust, leading to foreclosure. Even under her version of the facts, all her claims fail for other reasons.

IV. Substantive Claims

Negligence

To state a negligence claim, a plaintiff must allege "(1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's damages or injuries." (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 62 (*Lueras*).) Domondon alleged BofA and MERS owed her a duty of care "when they represented to [her] that they had approved and accepted a loan modification" that "consolidated both a first and second mortgage into one new mortgage with one mortgage

payment (consolidating the First Mortgage $660,000 and Second Mortgage $165,000 which total $825,000 plus additional late fees)." They breached that duty by failing to reconvey the second deed of trust, proximately causing the loss of her property through foreclosure based on a void deed of trust.

BofA and MERS argue this claim fails because they owed no duty of care to Domondon in the modification process. They rely on this Division's recent decision declining to find a lender owed a tort duty to a distressed borrower in negotiating a loan modification. (*Sheen v. Wells Fargo Bank, N.A.* (2019) 38 Cal.App.5th 346, 348 (*Sheen*), rev. granted, Nov. 13, 2019; see *Lueras, supra,* 221 Cal.App.4th at p. 67 [lender owes no "common law duty of care to offer, consider, or approve a loan modification, or to explore and offer foreclosure alternatives"].) Domondon relies on the contrary reasoning in *Alvarez v. BAC Home Loan Servicing, L.P.* (2014) 228 Cal.App.4th 941, which held a lender does, in fact, owe a duty of care to a borrower when it agrees to consider a loan modification. (*Id.* at p. 948.) *Sheen* specifically rejected *Alvarez*. (*Sheen, supra,* at p. 358.) We will continue to follow *Sheen*.

In passing, Domondon points out BofA and MERS "went beyond" undertaking a review for a loan modification and actually agreed to one. If this distinguishes her case from *Sheen*, she does not explain how or provide any legal authority or analysis to support a different result. We will not do her job for her, particularly given the complex and conflicting law surrounding the issue of duty in mortgage loan modifications.

Because she has not adequately supported this contention, we will not consider it.[6]

Misrepresentation Claims

While a lender does not owe a *general* duty to borrowers, a lender "does owe a duty to a borrower to not make material misrepresentations" in the loan modification process. (*Lueras, supra,* 221 Cal.App.4th at p. 68.) Domondon alleged claims for negligent and intentional misrepresentation because BofA and "Related Defendants" represented that the loan modification consolidated the first and second loans, which they knew was false or unreasonably believed was true.

"The elements of a cause of action for intentional misrepresentation are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. [Citation.] The elements of a claim for negligent misrepresentation are nearly identical. Only the second element is different, requiring the absence of reasonable grounds for believing the misrepresentation to be true instead of knowledge of its falsity." (*Daniels, supra,* 246 Cal.App.4th at p. 1166.)

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6 A recent decision from the Third District disagreed with *Sheen* to the extent *Sheen* did not consider the "special relationship" exception to the no-duty rule as it might apply to the loan modification process. (See *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 355.) Domondon has not argued the special relationship exception applies here, so we adhere to *Sheen* and do not consider the issue.

We agree with BofA and MERS that Domondon failed to allege these claims with enough specificity. "Causes of action for intentional and negligent misrepresentation sound in fraud and, therefore, each element must be pleaded with specificity." (*Daniels, supra,* 246 Cal.App.4th at p. 1166.) This requires allegations of " 'how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, . . . the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.' " (*Id.* at pp. 1166–1167.)

Domondon included none of these details in the SAC. She merely alleged she sought a loan modification in September 2011 and filled out a loan modification application to consolidate her loans. Then, in January 2012, BofA, MERS, and First Franklin accepted the modification. She alleged no details about the process except that "BofA informed client that the loan modification consolidated both a first and second mortgage into one new loan modification and that the second deed of trust would no longer exist," but that statement was "not true." BofA and "Related Defendants" either knew the statement was false or "had no reasonable ground for believing the representation was true."

Domondon also failed to allege any details surrounding MERS's specific involvement in the modification process or any misrepresentations it made to her. In her general allegations, she alleged BofA told her the loans would be consolidated, while in her misrepresentation claims themselves, she changed that to allege BofA and "Related Defendants" made the

misrepresentation, with "Related Defendants" defined as MERS and First Franklin.

Domondon did not address the specificity issue in appellate briefing, so she failed to carry her burden to show either how her current allegations are adequate or how she could amend the SAC to add the required detail. (*Daniels, supra,* 246 Cal.App.4th at p. 1163.) This was not the first time BofA and MERS raised this issue, either. They asserted this ground in their demurrer to the SAC. In her opposition to the demurrer, she did not suggest she could add detail to her complaint, but argued "[d]iscovery[] will lead to greater specificity of which agent[s] of Defendant is responsible for [her] harm." That is a valid point. (*Id.* at p. 1167 [specificity " 'is relaxed when the allegations indicate that "the defendant must necessarily possess full information concerning the facts of the controversy" [citations] or "when the facts lie more in the knowledge of the" ' defendant"].) Yet, after BofA and MERS raised this issue again in their brief on appeal, Domondon did not argue in her reply brief she should be excused from adding details to the SAC because respondents possessed them. She ignored the issue entirely.

Having failed to give *any* explanation on this point, we treat the contention as forfeited. She has not carried her burden to show she should be given yet another opportunity for leave to amend.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress requires allegations "(1) the defendant engage[d] in extreme and outrageous conduct with the intent to cause, or with reckless disregard for the probability of causing, emotional distress; (2) the plaintiff suffer[ed] extreme or severe emotional distress;

and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the plaintiff's extreme or severe emotional distress." (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 204 (*Ragland*).)

"Outrageous conduct is conduct that is intentional or reckless and so extreme as to exceed all bounds of decency in a civilized community." (*Ragland, supra,* 209 Cal.App.4th at p. 204.) "In order to avoid a demurrer, the plaintiff must allege with 'great[] specificity' the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.) We may decide as a matter of law whether the conduct " ' " 'may reasonably be regarded as so extreme and outrageous as to permit recovery.' " ' " (*Chang v. Lederman* (2009) 172 Cal.App.4th 67, 87.)

The only outrageous conduct Domondon alleged in the SAC was BofA's and MERS's failure to reconvey the second deed of trust following the loan modification. BofA and MERS argue this is not outrageous conduct as a matter of law and is merely an attempt to transform a breach of contract into an intentional tort. In her appellate briefing, Domondon cites no legal authority and provides no analysis to show respondents' failure to reconvey the deed of trust could meet the high bar of conduct reasonably considered "so extreme as to exceed all bounds of decency in a civilized society." (*Ragland, supra,* 209 Cal.App.4th at p. 204.) She has forfeited the issue.

Even absent forfeiture, this claim fails on the merits. In *Sheen*, the plaintiff alleged intentional infliction of emotional distress because the lender "knew he was in a state of financial difficulty," but "failed to respond to his modification application,

sent him misleading letters, and suggested to [the plaintiff's] wife the house would not be sold in foreclosure. [The lender] further confirmed [the plaintiff's] understanding of the letter with a further letter that made no mention of a foreclosure sale." (*Sheen, supra,* 38 Cal.App.5th at p. 350.) We deemed this claim "frivolous"—the lender's "alleged responses to [the plaintiff's] loan modification requests may have been confusing, confused, tardy, or flat wrong, but this alleged conduct was not so extreme as to exceed all bounds of what a civilized society usually tolerates." (*Id.* at p. 358.) The failure to reconvey the second deed of trust here was no worse than the conduct in *Sheen*. Domondon has not carried her burden to show she could allege outrageous conduct if given leave to amend.

Negligent Infliction of Emotional Distress

Domondon asserted a separate claim for *negligent* infliction of emotional distress, but that is not an independent tort. "[R]ather, '[t]he tort is negligence, a cause of action in which a duty to the plaintiff is an essential element.' " (*Ragland, supra,* 209 Cal.App.4th at p. 205.) In a single sentence in her opening brief, she refers us back to her arguments to support the duty element of her negligence claim. As we held above, we will follow *Sheen* to find no duty in this context, which defeats her claim.

Unfair Competition Law

Domondon alleged BofA and MERS violated the Unfair Competition Law, section 17200, et seq. (UCL) "by accepting a loan modification, consolidating the first and second mortgage, representing the aforementioned as the truth, but failing to reconvey the second deed of trust, thereby placing [Domondon] at great risk of losing her house due to the [rogue] Deed of Trust." As relief, she sought injunctive relief to reverse the foreclosure

sale and an "Unconditional Stay of Unlawful Detainer Action." She asserted no claim for restitution but claimed damages for her costs and attorney's fees.

BofA and MERS argue Domondon has failed to adequately allege an available remedy under the UCL. Once again, Domondon failed to address this issue in her briefs on appeal, forfeiting it. On the merits, BofA and MERS are correct. Under the UCL, a private plaintiff's only remedies are injunctive relief and restitution. (*Daniels, supra,* 246 Cal.App.4th at p. 1187.) The foreclosure sale already occurred and Domondon was evicted through an unlawful detainer action, so her request for an injunction to prevent them is moot. (See *Ragland, supra,* 209 Cal.App.4th at p. 208; cf. *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 820–821 ["Since the property has been sold, there remain no prospective claims appropriate for declaratory relief."].)

Domondon's attorney's fees and costs cannot be deemed restitution because " '[t]he 'notion of restoring something to the victim of unfair competition includes two separate components. The offending party must have obtained something to which it was not entitled *and* the victim must have given up something which he or she was entitled to keep.' " (*Daniels, supra,* 246 Cal.App.4th at p. 1187.) Domondon did not allege BofA or MERS obtained any of her attorney's fees or costs and failed to show how she could amend this claim if given leave to do so.

Promissory Estoppel

Promissory estoppel requires " ' " '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be

injured by his reliance.' " ' " (*Daniels, supra,* 246 Cal.App.4th at p. 1178.) Domondon alleged she reasonably and detrimentally relied on the promise from BofA and "Related Defendants" to modify her loans to consolidate them into a single loan, and they ratified the agreement by accepting her loan payments. By failing to reconvey the second deed of trust, they caused her to lose her property.

BofA and MERS argue promissory estoppel does not apply because Domondon's allegations amount to a breach of contract, and the two claims are mutually exclusive. " 'Promissory estoppel is "a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced." ' [Citation.] 'The purpose of this doctrine is to make a promise binding, under certain circumstances, without consideration in the usual sense of something bargained for and given in exchange. If the promisee's performance was requested at the time the promisor made his promise and that performance was bargained for, the doctrine is inapplicable. [Citation.] Accordingly, a plaintiff cannot state a claim for promissory estoppel when the promise was given in return for proper consideration. The claim instead must be pleaded as one for breach of the bargained-for contract." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 275 (*Fontenot*), disapproved on another ground by *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13; see *Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 249.)

Once again, Domondon does not address this issue on appeal, forfeiting it. In any case, there was no absence of consideration here that would justify applying promissory

estoppel. In signing the modification agreement, Domondon gave consideration by resuming her payments under the new consolidated loan, and BofA and MERS gave consideration by foregoing the enforcement of their right to foreclose on the original loans. (See *Fontenot, supra,* 198 Cal.App.4th at p. 275 [loan forbearance agreement supported by borrower's consideration in the form of resumed payments on promissory note].) Domondon has not stated a claim for promissory estoppel and has not shown she could amend the complaint to do so.

Quiet Title Against MERS

Domondon sought to quiet title against MERS, alleging MERS "passed invalid title in what should have been a void second deed of trust to the property." " 'An element of a cause of action for quiet title is "[t]he adverse claims to the title of the plaintiff against which a determination is sought.' " (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1010.) Following the foreclosure sale to a third party, MERS had no adverse title claim to support a quiet title action. (*Ibid.*) Domondon argues the third party purchaser took title subject to MERS's *first* deed of trust, but she cites nothing in the record to support that conclusion. Nor did she allege MERS maintained that interest after the foreclosure sale. To the contrary, she alleges the trustee's deed upon sale "convey[ed] title to the subject property to" the third party purchaser. Because MERS has no adverse title claim, this cause of action fails.

Slander of Title Against MERS

"To state a claim for slander of title, a plaintiff must allege '(1) a publication, (2) which is without privilege or justification,' (3) which is false, and (4) which 'causes direct and immediate pecuniary loss.' " (*Schep v. Capital One, N.A.* (2017) 12

Cal.App.5th 1331, 1336.) Domondon alleged MERS slandered her title because the second deed of trust "without privilege remained published (recorded) without being reconveyed." She adds a second ground in her brief on appeal that MERS also slandered her title "by publishing an assignment" of the second deed of trust "without proper beneficial interest" in it.

In her appellate brief, Domondon devotes one sentence to each of these arguments, providing no cogent legal analysis or citation of any legal authority. We find both issues forfeited. Nor has she carried her burden to show reversal is warranted on this claim or leave to amend should be granted.

Declaratory Relief and New Trial Motion

Domondon's request for declaratory relief and her new trial motion rested on the existence of valid underlying claims. Because she failed to show the trial court erred in sustaining her demurrer without leave to amend, her declaratory relief claim fails and the court did not err in denying the new trial motion.

V. Leave to Amend

As noted throughout this opinion, Domondon has failed to address how she could amend the SAC to allege viable claims. She has not shown the trial court abused its discretion in denying leave to amend. (*Daniels, supra,* 246 Cal.App.4th at p. 1163.)

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

BIGELOW, P. J.

WE CONCUR:

STRATTON, J. WILEY, J.