

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 YAN QU and MAN LI,

No. C 13-6005 CW

5 Plaintiffs,

ORDER GRANTING
MOTIONS TO DISMISS
AND GRANTING
PLAINTIFFS LEAVE
TO AMEND CERTAIN
CLAIMS AGAINST
DEFENDANT WELLS
FARGO

6 v.

7 MIKE HUANG; ZIPREALTY, INC.;
8 PRUDENTIAL CALIFORNIA REALTY;
9 JOHN A. AZEVEDO; WACHOVIA
CORPORATION; WELLS FARGO BANK,
10 N.A.; and FEDERAL HOME LOAN
MORTGAGE CORPORATION,

11 Defendants.

12 _____/

13 Plaintiffs Yan Qu and Man Li assert various claims related to
14 their purchase of a condominium in Hayward, California. Defendant
15 Wells Fargo Bank, N.A., as successor by merger with Wachovia
16 Mortgages, FSB, erroneously sued as Wachovia Corporation, and
17 Defendant Federal Home Loan Mortgage Corporation (FHLM) have filed
18 motions to dismiss the second amended complaint (2AC).¹
19 Plaintiffs oppose the motions. Having considered the papers filed
20 by the parties, the Court GRANTS Defendant Wells Fargo's motion to
21 dismiss (Docket No. 9) and grants Plaintiffs leave to amend
22 certain claims against Wells Fargo. The Court grants Defendant
23 FHLM's motion to dismiss without leave to amend (Docket No. 23).

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26 ¹ Defendants Michael Huang, Ziprealty, Inc., John Azevedo and
27 Prudential California Realty have answered the complaint. Several
28 of the parties have filed cross- and counter-claims that are not
at issue in these motions.

1 BACKGROUND

2 The following facts are taken from the 2AC and certain
3 documents of which the Court takes judicial notice.² Plaintiffs
4 allege that, at all times relevant to this complaint Plaintiff Li
5 was stationed in Japan with the United States Navy. 2AC ¶ 12.
6 Plaintiffs further allege that Li's mother, Plaintiff Qu, "speaks
7 and comprehends little to no English, and has limited written
8 English comprehension skills." Id. Plaintiff Li signed the
9 relevant documents after they were emailed or mailed to her in
10 Japan, or Plaintiff Yu signed documents with power of attorney for
11 Plaintiff Li, or both. Id.

12 In 2010, Defendant Azevedo, a real estate agent working for
13 Defendant Prudential California Realty, was the listing broker for
14 a condominium at 342 Blossom Way in Hayward, California. 2AC
15 ¶ 15; see also 2AC, Ex. 1. The listing for the property notes
16 that "public Record shows address as: 336 Blossom Way #3." 2AC,
17 Ex. 1. Plaintiffs were represented by Defendant Huang, a real
18 estate agent working for Defendant Ziprealty, Inc., who showed
19 them the property at 342 Blossom Way. SAC ¶ 15. On January 20,
20 2010, Plaintiffs signed a Residential Purchase Agreement to
21 purchase the property at 342 Blossom Way. Id.; see also SAC, Ex.
22 2. Plaintiffs allege that, prior to closing on the property, they
23 received other documents from Fidelity National Title related to
24 the purchase of the property and that some of those documents

25 ² With their filings, Defendants Wells Fargo and FHLM have
26 asked that the Court take judicial notice of various documents,
27 including Plaintiffs' original complaint in this case and
28 documents related to the purchase of the property. Plaintiffs do
not oppose or object to the requests and the Court grants them.

1 refer to the property purchased as 336 Blossom Way #4. SAC ¶ 18.
2 Plaintiffs further allege that some of the documents refer to APN
3 429-0014-128, while others refer to APN 429-0014-129. Id.
4 Plaintiffs do not attach any of these documents to their
5 complaint.

6 A grant deed recorded February 19, 2010 indicates Wells
7 Fargo, NA granted the property to Plaintiffs. SAC, Ex. 2. The
8 grant deed refers to Assessor's Parcel Number (APN) 429-0014-129.
9 Id. The grant deed does not include any street addresses.³ Id.
10 On February 19, 2010, Defendant Huang gave them the keys to 342
11 Blossom Way and they proceeded to move into the property and spend
12 "a substantial amount of money to renovate the property." Id.
13 ¶ 21.

14 On September 24, 2010, a law enforcement officer served
15 Plaintiffs with a notice of a delayed access to unlawful detainer
16 case against named and unnamed defendants, Alameda Superior Court
17 case number HG10537928, Federal Home Loan Mortgage Corporation v.
18 Singh. Id. ¶ 22. On April 25, 2011, Plaintiffs received a letter
19 from an attorney, stating that FHLM held title to the property
20 identified as 342 Blossom Way, Unit #3 and Plaintiffs hold title
21 to 340 Blossom Way, Unit #4. Id. ¶ 23. The letter asked
22 Plaintiffs to move out of 342 Blossom Way and into 340 Blossom
23 Way. Plaintiffs state that the day they received the letter was
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27 ³ Plaintiffs allege that they received a grant deed that
28 identified the property as "342 Blossom Way, #4" and "APN: 429-
0014-129." 2AC ¶ 20. Plaintiffs do not provide a copy of this
grant deed.

1 the first time they suspected there was something wrong with the
2 title to their property.

3 On April 23, 2013, Plaintiffs filed a complaint in state
4 court. On December 13, 2013, Plaintiffs filed the 2AC at issue in
5 this motion. Also on December 13, 2013, Defendant FHLM removed
6 the action to this Court.

7 LEGAL STANDARD

8 A complaint must contain a "short and plain statement of the
9 claim showing that the pleader is entitled to relief." Fed. R.
10 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to
11 state a claim, dismissal is appropriate only when the complaint
12 does not give the defendant fair notice of a legally cognizable
13 claim and the grounds on which it rests. Bell Atl. Corp. v.
14 Twombly, 550 U.S. 544, 555 (2007). In considering whether the
15 complaint is sufficient to state a claim, the court will take all
16 material allegations as true and construe them in the light most
17 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d
18 896, 898 (9th Cir. 1986). However, this principle is inapplicable
19 to legal conclusions; "threadbare recitals of the elements of a
20 cause of action, supported by mere conclusory statements," are not
21 taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
22 (citing Twombly, 550 U.S. at 555).

23 When granting a motion to dismiss, the court is generally
24 required to grant the plaintiff leave to amend, even if no request
25 to amend the pleading was made, unless amendment would be futile.
26 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
27 F.2d 242, 246-47 (9th Cir. 1990). In determining whether
28 amendment would be futile, the court examines whether the

1 complaint could be amended to cure the defect requiring dismissal
2 "without contradicting any of the allegations of [the] original
3 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th
4 Cir. 1990).

5 DISCUSSION

6 I. Defendant Wells Fargo's Motion to Dismiss

7 Defendant Wells Fargo argues that each of Plaintiffs' causes
8 of action against it fails to state a claim upon which relief can
9 be granted.

10 A. Breach of Fiduciary Duty

11 Defendant Wells Fargo argues, and Plaintiffs concede, that
12 there was no fiduciary relationship between Plaintiffs and
13 Defendant Wells Fargo. Accordingly, the Court dismisses this
14 cause of action as to Defendant Wells Fargo without leave to
15 amend.

16 B. Negligence

17 Defendant Wells Fargo next argues that Plaintiffs fail to
18 state a claim for negligence against it. "The threshold element
19 of a cause of action for negligence is the existence of a duty to
20 use due care." Paz v. State of Cal., 22 Cal. 4th 550, 559 (2000),
21 citing Bily v. Young & Co., 3 Cal. 4th 370, 397 (1992). Aside
22 from affirmative duties that arise in the context of special
23 relationships, a person is responsible for "an injury occasioned
24 to another by his want of ordinary care or skill in the management
25 of his property or person." Cal. Civ. Code § 1714(a). California
26 law also provides, "A person may not ordinarily recover in tort
27 for the breach of duties that merely restate contractual
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1 obligations. Instead, courts will generally enforce the breach of
2 a contractual promise through contract law, except when the
3 actions that constitute the breach violate a social policy that
4 merits the imposition of tort remedies." Aas v. Superior Court,
5 24 Cal. 4th 627, 643 (2000), superseded by statute on other
6 grounds as stated in Burch v. Superior Court, 223 Cal. App. 4th
7 1411 (2014) (internal quotation marks and citations omitted).

8 Where, as here, an agreement to purchase real property
9 results in the recording of a deed, the rights of the parties
10 "depend upon the deed, and not upon the agreement--the latter
11 being merged in and extinguished by the former. The deed is
12 deemed to express the final and entire contract between the
13 parties." Bryan v. Swain, 56 Cal. 616, 617 (1880). As Defendant
14 Wells Fargo points out, California law provides that a grant deed,
15 the method by which the property was conveyed from Defendant Wells
16 Fargo to Plaintiffs, contains two implied covenants and "none
17 other," that: (1) "previous to the time of the execution of such
18 conveyance, the grantor has not conveyed the same estate, or any
19 right, title, or interest therein, to any person other than the
20 grantee" and (2) "such estate is at the time of the execution of
21 such conveyance free from incumbrances done, made, or suffered by
22 the grantor, or any person claiming under him." Cal. Civ. Code
23 § 1113. Moreover, Plaintiff does not allege that Defendant Wells
24 Fargo had any knowledge of the error prior to the date of the
25 sale.

26 Plaintiffs argue, without citation, that Defendant Wells
27 Fargo "owed a duty to the plaintiffs that it only list[], show[],
28 and sell[] a property that it owns." Opposition to Motion to

1 Dismiss at 2. Plaintiffs further allege that "while there were
2 numerous discrepancies in the title search including but not
3 limited to two assessor's parcel numbers to describe 342 Blossom
4 Way, [Defendant Wells Fargo] made no effort to investigate the
5 matter and correct mistakes in the titles if any." 2AC ¶ 30.
6 However, Plaintiffs entered into an arm's-length transaction with
7 Defendant Wells Fargo to purchase the property. See Erlich v.
8 Menezes, 21 Cal. 4th 542, 551 (1999) ("An arms-length commercial
9 transaction does not generally implicate such a 'special
10 relationship.'") Moreover, as discussed above, the home was
11 transferred through a grant deed, which provides no covenant of
12 good title.

13 Further, there is a presumption that a buyer of real property
14 "act[s] upon his own knowledge of the title, and he will not be
15 heard to complain that he did not receive a perfect title, unless
16 some misrepresentation was made, upon which he was authorized to
17 and did, rely in making the contract, that will entitle him to
18 relief." Gaffey v. Welk, 46 Cal. App. 385, 388 (1920) (internal
19 quotation marks omitted). In California, "it is standard--and
20 always necessary--for a buyer to require the issuance of a policy
21 of title insurance concurrent with (and as a condition of) the
22 closing, insuring that title is held in the buyer's name."
23 Greenwald & Bank, Cal. Practice Guide: Real Property Transactions
24 (The Rutter Group 2013) ¶ 3:12, p. 3-6 (emphasis in original); see
25 also id. at ¶ 4:404, p. 4-94.3 ("buyers should thoroughly research
26 the condition of title to the property to be purchased") (emphasis
27 in original). Indeed, the sales contract attached to Plaintiffs'
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1 complaint indicates that Plaintiffs as buyers were responsible for
2 purchasing a title insurance policy. See Complaint, Ex. 2 at 2.

3 Plaintiffs acknowledge that on February 17, 2010, prior to
4 closing on the purchase, the title company provided them with
5 documents related to the purchase. In their complaint, Plaintiffs
6 state,

7 The documents do not identify the property as either 342
8 Blossom Way, or 340 Blossom Way. Some of the documents
9 identify the property being purchased by Plaintiffs as
10 336 Blossom Way, #4, Hayward, CA 94541, while others
11 describe the property by APN number: 429-0014-128.
12 Within these documents, there is no connection to
13 identify whether 336 Blossom Way, #4, is 342 Blossom Way
14 or 340 Blossom Way. Furthermore, the documents which
15 describe the property using APN numbers contain
16 different APN numbers between the documents. Some
17 identify the property as 429-0014-128, while others
18 identify the property as 429-0014-129.

19 Complaint ¶ 18. This should have been sufficient to put
20 Plaintiffs on notice that there might be defects in the title to
21 be transferred.

22 Accordingly, the Court finds that Plaintiffs have failed to
23 state a claim for negligence against Defendant Wells Fargo.
24 Because amendment would be futile, dismissal is without leave to
25 amend.

26 C. Negligent Infliction of Emotional Distress

27 Negligent infliction of emotional distress is not an
28 independent tort under California law, but is simply the tort of
negligence. Klein v. Children's Hospital Medical Center of
Northern California, 46 Cal. App. 4th 889, 894 (1996). Because
the Court concludes that Plaintiffs have not stated a cause of
action for negligence against Defendant Wells Fargo, Plaintiffs'

1 cause of action for negligent infliction of emotional distress is
2 also dismissed as to Defendant Wells Fargo without leave to amend.

3 D. Breach of Contract

4 "The elements of a cause of action for breach of contract
5 are: 1) the existence of the contract; 2) performance by the
6 plaintiff or excuse for nonperformance; 3) breach by the
7 defendant; and 4) damages." McNeary-Calloway v. JP Morgan Chase
8 Bank, N.A., 863 F. Supp. 2d 928, 954 (N.D. Cal. 2012). Plaintiffs
9 allege that "Defendants breached the written agreement by failing
10 to deliver the correct title into escrow for the Plaintiffs to
11 receive on that date, but instead delivered title to another
12 property." Complaint ¶ 42. As discussed above, the contract in
13 this case is the grant deed executed by Defendant Wells Fargo and
14 Plaintiffs. In that grant deed, Defendant Wells Fargo agreed to
15 transfer APN 429-0014-129 to Plaintiffs. Plaintiffs have not
16 alleged that Defendant Wells Fargo failed to make this transfer.
17 Moreover, Plaintiffs have not alleged that Defendant Wells Fargo
18 breached any of the implied covenants imposed by California Civil
19 Code § 1113 discussed above. Accordingly, the Court finds that
20 Plaintiffs have failed to state a breach of contract claim against
21 Defendants Wells Fargo. If Plaintiffs can truthfully allege
22 additional facts to support their breach of contract claims, they
23 may do so in an amended complaint.

24 E. Fraud

25 Under California law, the elements of fraud are
26 "(a) misrepresentation (false representation, concealment, or
27 nondisclosure); (b) knowledge of falsity (or scienter); (c) intent
28 to defraud, i.e., to induce reliance; (d) justifiable reliance;

1 and (e) resulting damage." Small v. Fritz Cos., Inc., 30 Cal. 4th
2 167, 173 (2003) (internal quotation marks and citations omitted).
3 "In all averments of fraud or mistake, the circumstances
4 constituting fraud or mistake shall be stated with particularity."
5 Federal Rule of Civil Procedure 9(b). The allegations must be
6 "specific enough to give defendants notice of the particular
7 misconduct which is alleged to constitute the fraud charged so
8 that they can defend against the charge and not just deny that
9 they have done anything wrong." Semegen v. Weidner, 780 F.2d 727,
10 731 (9th Cir. 1985). Scierer may be averred generally, simply by
11 saying that it existed. Id. at 1547; see Fed. R. Civ. Proc. 9(b)
12 ("Malice, intent, knowledge, and other condition of mind of a
13 person may be averred generally"). Statements of the time, place
14 and nature of the alleged fraudulent activities are sufficient,
15 id. at 735, provided the plaintiff sets forth "what is false or
16 misleading about a statement, and why it is false." In re
17 GlenFed, Inc., Sec. Litig., 42 F.3d 1541, 1548 (9th Cir. 1994).
18 Allegations of fraud based on information and belief usually do
19 not satisfy the particularity requirements of Rule 9(b); however,
20 as to matters peculiarly within the opposing party's knowledge,
21 allegations based on information and belief may satisfy Rule 9(b)
22 if they also state the facts upon which the belief is founded.
23 Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9th Cir.
24 1987).

25 Plaintiffs allege that Defendant Wells Fargo falsely
26 represented to Plaintiffs that they were contracting to purchase
27 342 Blossom Way. Plaintiffs allege that "Defendants knew that
28 that representation was false when they made it, or they made it

1 recklessly and without regard for its truth." 2AC ¶ 46. However,
2 Plaintiffs make no factual allegations to support their contention
3 that Defendants knew or should have known of the mistake regarding
4 the property to be sold. As noted above, any claim for fraud must
5 be plead with particularity. Accordingly the Court dismisses
6 Plaintiffs' fraud claim as to Defendant Wells Fargo. If
7 Plaintiffs can truthfully allege additional facts to support their
8 fraud claim, they may do so in an amended complaint.

9 II. Defendant FHLM's Motion to Dismiss

10 Plaintiffs allege two causes of action against Defendant
11 FHLM, negligence and negligent infliction of emotional distress.
12 As discussed above, both of these claims require a showing of a
13 duty owed by Defendant to Plaintiffs. In their opposition to the
14 motion to dismiss, Plaintiffs argue that FHLM "owes a duty to the
15 general public and plaintiffs not to allow the co-defendants
16 access to its property." Opposition at 2. However, Plaintiffs do
17 not provide any authority to support this contention. Here,
18 Plaintiffs had no relationship to FHLM. "As a general rule one
19 has no duty to control the conduct of another, and no duty to warn
20 those who may be endangered by such conduct." Peterson v. San
21 Francisco Cmty. Coll. Dist., 36 Cal. 3d 799, 806 (1984) (citations
22 omitted). A duty may arise where "(a) a special relation exists
23 between the actor and the third person which imposes a duty upon
24 the actor to control the third party's conduct, or (b) a special
25 relation exists between the actor and the other which gives the
26 other a right to protection." Id. Plaintiffs have made no such
27 allegations here. Accordingly, the Court dismisses Plaintiffs'
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1 claims as to Defendant FHLM. Because amendment would be futile,
2 dismissal is without leave to amend.

3 CONCLUSION

4 For the foregoing reasons, the Court GRANTS Defendant Wells
5 Fargo's motion to dismiss (Docket No. 9). Plaintiffs' claims for
6 negligence and negligent infliction of emotional distress are
7 dismissed without leave to amend as to Defendant Wells Fargo.
8 Plaintiffs' claim for breach of contract is dismissed with leave
9 to amend if Plaintiffs can truthfully allege facts sufficient to
10 remedy the deficiencies noted above. Plaintiffs' claim for fraud
11 is dismissed with leave to amend if Plaintiffs can truthfully
12 allege facts sufficient to support a finding that Defendant Wells
13 Fargo recklessly disregarded the truth with respect to the
14 property to be sold. Any amended complaint must be filed within
15 fourteen days of the date of this order. If Plaintiffs file an
16 amended complaint, Defendant shall respond to it within fourteen
17 days after it is filed. If Defendant files a motion to dismiss,
18 Plaintiffs shall respond to the motion within fourteen days
19 thereafter. Defendants may file a reply within seven days after
20 that. Any motion to dismiss will be decided on the papers.

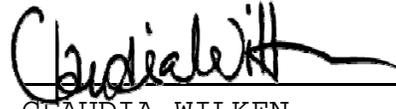
21 The Court GRANTS Defendant FHLM's motion to dismiss (Docket
22 No. 23). Plaintiffs' claims against Defendant FHLM are dismissed
23 without leave to amend.

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A case management conference will be held in this case at 2:00 PM on Wednesday, December 3, 2014. The parties shall submit a joint case management statement by November 26, 2014.

IT IS SO ORDERED.

Dated: September 25, 2014



CLAUDIA WILKEN
United States District Judge