



Appellate Reports and Cases in Brief

Miles v. Deutsche Bank National Trust Company

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Miles v. Deutsche Bank National Trust Company

(2015) __ Cal.App.4th __ (4th Dist., Div. 2.)

Who needs to know about this case:

Lawyers pleading breach-of-contract claims; lawyers claiming tort damages in cases involving contracts

Why it's important: (1) acknowledges that a breach-of-contract claim can be stated without attaching the contract as an exhibit or pleading its terms verbatim (recognizing that the case that says that this is a requirement, *Otworth v. Southern Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 459, was wrongly decided); (2) acknowledges that a plaintiff who chooses not to amend the complaint after a demurrer is sustained with leave to amend does not forfeit appellate review of the demurrer ruling; and (3) acknowledges that the measure of damages for a tort claim is defined by Civil Code section 3333, and that this standard applies even when the tort is associated with the breach of a contract.

[*Editor's note:* the first two holdings, above, dispatch two arguments that are meritless, but which are frequently raised by demurring defendants].

Synopsis: Miles refinanced his \$815,000 mortgage in July 2005, with an adjustable-rate loan. The servicer was HomeEq. When the monthly payment increased to \$6,800 in August 2007, he sought a modification. In February 2008, HomeEq required him to pay a \$12,000

“modification processing fee” before he could see the terms of the proposed modification. Miles paid. HomeEq sent a modification agreement increasing his principal balance to \$834,052, and lowering the interest rate to 5.99 percent. Miles made the first payment under the agreement, but the next month HomeEq said it would not honor the agreement. It sent a new agreement showing a principal balance of \$870,767, with no explanation for the increase. In the ensuing months, HomeEq continued to demand new fees from Miles to obtain a modification. In all, Miles paid over \$44,000 in fees but never received a modification. He stopped making payments, and the lender foreclosed and evicted him. He sued HomeEq as well as the owner of the note for a variety of claims, including breach of contract, fraud, negligence, and wrongful foreclosure.

The trial court sustained the defendants' demurrers to all claims except for wrongful foreclosure with no explanation, but gave Miles 30 days to amend. He did not amend. The court then granted summary judgment against him on the sole remaining claim, wrongful foreclosure, on the ground that he could not prove any damages because he had no equity in his house. Reversed.

On appeal, the defendants argued that Miles “voluntarily abandoned” the claims he declined to amend. The Court of Appeal made it clear that there was no merit in this claim: “Defendants cite no authority for this remarkable proposition,

and it would be an absurd rule indeed. If a plaintiff had already stated all available facts, but was given an opportunity to amend, how could forfeiture be avoided under defendants' rule? By making up facts? That is not the law. Even if given an opportunity to amend, a plaintiff may stand on the sufficiency of the complaint.”

Next, the court held that Miles' failure to either attach the contract or plead its terms verbatim was not a defect that would support a demurrer to the breach-of-contract claim. The court explained that the case that holds that *all* breach-of-contract claims are defectively pleaded unless they attach the contract or plead its terms verbatim, *Otworth*, had misinterpreted the authority it relied on, and that there was, in fact, no such rule in California.

Finally, the court rejected the claim that unless Miles had equity in his house, he could not prove any damages on his wrongful-foreclosure claim. The court noted that the tort of wrongful foreclosure was likely to cause various types of damage to the plaintiff, including moving expenses, lost rental income, damage to credit, and emotional distress. These damages are recoverable even if the plaintiff had no equity in the home that was wrongfully foreclosed. “The rule applied by the trial court and urged by defendants would create a significant moral hazard in that lenders could foreclose on underwater homes with impunity, even if the debtor was current on all debt obligations and there was no legal justification



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for the foreclosure whatsoever. So long as there was no equity, there would be no remedy for wrongful foreclosure. . . . Surely that cannot be the law. The consequences of wrongfully evicting someone from their home are too severe to be left unchecked. For the reasons expressed

above, a tort action lies for wrongful foreclosure, and all proximately caused damages may be recovered.”

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a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of Advocate magazine.



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