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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ANIMAL PROTECTION AND
RESCUE LEAGUE, INC. et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B304781

(Los Angeles County
Super. Ct. No. 19STCV24522)

APPEAL from a judgment of the Superior Court for Los Angeles County, Barbara A. Meiers, Judge. Affirmed.

Simon Law Group, David R. Simon; Law Offices of Bryan W. Pease and Bryan W. Pease for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Kathleen A. Kenealy, Chief Assistant City Attorney, Scott Marcus, Senior Assistant City Attorney, Blithe S. Bock, Assistant City Attorney, and Sara Ugaz, Deputy City Attorney, for Defendant and Respondent.

INTRODUCTION

As described in the somewhat confusing complaint,¹ this lawsuit arises out of a protest on September 16, 2018, outside a facility located on Ventura Boulevard in Woodland Hills by plaintiffs Animal Protection and Rescue League, Inc., Cory Mac A’Ghobhainn, Lisa Karlan, Lyanne Fernandez, and Ankur Jain. The complaint does not identify the particular facility, but there is no dispute that plaintiffs were protesting the performance inside the facility of an Orthodox Jewish religious ritual called Kapparot, in which a chicken is killed and the carcass disposed of.

Following the protest, plaintiffs sued defendants City of Los Angeles (City), and Sergeant Foster Rains, a member of the Los Angeles Police Department present at the protest. Plaintiffs sought declaratory relief, in particular, a declaration that any religious ritual (apparently such as Kapparot) involving killing an animal and discarding its carcass violates Penal Code section 597, subdivision (a), which criminalizes maliciously and intentionally killing an animal, unless that animal is used for food or other lawful purpose (hereafter, section 597(a)).

Plaintiffs also sought declaratory relief as to Los Angeles Municipal Code section 53.67 (hereafter LAMC 53.67), which prohibits injuring or killing an animal for a religious ritual when that animal is not primarily used for food purposes. As best we understand the rather

¹ The first amended complaint is the operative pleading. For ease of reference, we refer simply to “the complaint.”

unfocused allegations, plaintiffs alleged that the City does not enforce section LAMC 53.67, because the City believes the ordinance is unconstitutional on general First Amendment principles. However, plaintiffs did not seek a declaration that LAMC 53.67 must be enforced. Instead, they sought a declaration that LAMC 53.67 is unconstitutional on a ground purportedly different than the ground relied on by the City, namely, that it is unconstitutional because it improperly targets only religiously motivated conduct.

Finally, on behalf of plaintiffs Fernandez and Jain, the complaint also asserted violations under the Bane and Ralph Civil Rights Acts (Civ. Code, § 52.1, 51.7, respectively) based on their treatment by Sergeant Rains and other officers during the protest.

The trial court sustained without leave to amend the demurrer filed by the City. Following the sustaining of the demurrer, plaintiffs dismissed Sergeant Rains as a defendant. In this appeal from the judgment of dismissal entered on the sustaining of the demurrer, we hold that plaintiffs have not properly alleged an actual controversy for declaratory relief. We also conclude plaintiffs Fernandez and Jain failed to state any claim for a civil rights violation. Therefore, we affirm the judgment of dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

The following factual background is taken from the allegations of the complaint, which we assume to be true under the standard of review applicable to our review of a trial court's ruling on a demurrer. (See *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 (*Zelig*).)

As noted, plaintiffs were protesting the Kapparot ritual occurring inside an unidentified facility. The ritual participants, who are private citizens and unaffiliated with the City, are not parties to the case.

The sole allegations of historical fact made in the complaint relate to warnings and threats allegedly made by law enforcement officers to Jain and Fernandez regarding their activities during the protest, and the alleged use of violence against Fernandez. In particular, plaintiffs allege that Sergeant Rains took Jain aside and “threatened him with arrest if he continued leading chants.” Sergeant Rains also took Fernandez aside and “threatened her with arrest for using a megaphone.” One of the officers with Sergeant Rains “physically grabbed” Fernandez and pulled her aside. Sergeant Rains and other officers threatened to arrest Fernandez and confiscate her property if she continued to use the megaphone.

As to the legal basis for actual controversy supporting their declaratory relief claim, plaintiffs alleged that the killing of chickens and discarding their carcasses in the Kapparot ritual violates section 597(a). Without any specific supporting factual allegations as to when or how such a policy was adopted, plaintiffs alleged that the City created a “de facto” exception to section 597(a) by allowing religiously motivated animal killings to take place.

Similarly, without any factual specifics, plaintiffs alleged that the City refused to allow law enforcement to accept and process private persons arrest forms pursuant to Penal Code section 837. Plaintiffs also alleged in a conclusory fashion that the City prohibited Los Angeles Animal Services, the local agency that enforces animal cruelty laws,

from enforcing section 597(a) against killing and discarding animals for religious rituals. Plaintiffs sought a declaration that there is no exception to section 597(a) for killing animals and discarding their carcasses based on religion.

In a confusing claim, plaintiffs also sought declaratory relief as to LAMC 53.67. According to plaintiffs, the City believes the ordinance is unconstitutional based on general First Amendment principles.

However, plaintiffs did not seek a declaration that section 53.67 must be enforced, but rather a declaration that 53.67 is unconstitutional on a ground purportedly different than the ground relied on by the City, namely, that it is unconstitutional because it improperly targets religiously motivated conduct while exempting all other conduct.

In the remaining causes of action, plaintiffs Jain and Fernandez alleged, first, a violation under the Bane Act based on Sergeant Rains and other officers threatening to arrest them while exercising their First Amendment rights. Jain and Fernandez also alleged a violation under the Ralph Act when they were threatened with violence based on their identification as animal rights activists who are opposed to killing and discarding chickens for religious purposes. Moreover, violence was used against Fernandez by “physically grabbing and detaining her” due to her identification as an animal rights activist.

The City filed a demurrer to the complaint.

The trial court sustained the demurrer without leave to amend, after which plaintiffs dismissed Sergeant Rains from the lawsuit. As here relevant, as to declaratory relief, the court found plaintiffs failed to allege a justiciable dispute. Specifically, plaintiffs alleged no facts

demonstrating that the City had created a “de facto” exception to section 597(a) or prohibited enforcement of section 597(a) based on religion. Similarly, plaintiffs failed to allege any facts showing that the City created a religious exception to LAMC 53.67.

The court also concluded that Jain and Fernandez failed to properly allege a violation under the Bane Act, as the threat of arrest is not enough to constitute a “threat of violence” prohibited under the statute. In addition, the “threat of arrest” or “application of physical force” is not sufficient to state a claim under the Ralph Act.

Plaintiffs had also filed a motion for preliminary injunction, asking the trial court to enjoin the City from prohibiting the enforcement of section 597(a) when an animal killing is motivated by religion. After sustaining the demurrer without leave to amend, the court deemed plaintiffs’ motion for preliminary injunction moot.

The trial court entered a judgment of dismissal, from which plaintiffs timely filed a notice of appeal.

DISCUSSION

Plaintiffs contend they are entitled to declaratory relief because there is an actual controversy: (1) as to the validity of the City’s alleged official position that religiously motivated animal killings are exempt from section 597(a), and (2) as to the legal ground that renders LAMC 53.67 unconstitutional. Jain and Fernandez also argue they have pled

sufficient facts to establish violations under the Bane Act and Ralph Acts. We disagree and affirm the trial court’s ruling.²

A. Standard of Review

On review of a judgment of dismissal following the sustaining of a demurrer, “our standard of review is clear: “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained 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.” (*Zelig, supra*, 27 Cal.4th at p. 1126.) “Plaintiff must show in what manner he can amend

² Plaintiffs further argue they are entitled to a preliminary injunction to enjoin the City from prohibiting enforcement of section 597(a) for religiously motivated conduct. “A preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. (*Gray v. Bybee* (1943) 60 Cal.App.2d 564, 571.) It is not, in itself, a cause of action. Thus, a cause of action must exist before injunctive relief may be granted. (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168.)” (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623.) Based on our affirmance of the judgment of dismissal of the complaint, plaintiffs’ request for a preliminary injunction is moot and we do not discuss the issue.

his complaint and how that amendment will change the legal effect of his pleading.” (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.)

B. *Declaratory Relief*

Plaintiffs seek declaratory relief that there is no religious exception to section 579(a), and that the LAMC 53.67 is unconstitutional because it only targets religiously motivated conduct.

Declaratory relief is appropriate where there is a justiciable controversy, that is, “actual controversy relating to the legal rights and duties of the respective parties.” (Code Civ. Proc., § 1060.) The concept of justiciability encompasses two important but intertwined requirements: ripeness and standing. (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 181; *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 813.) Before a controversy is ripe for adjudication, as required for declaratory relief, it “must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171, citing *Aetna Life Ins. Co. v. Haworth* (1937) 300 U.S. 227, 240–241.) The second requirement, standing, goes to the existence of a cause of action in the plaintiff.

(*Sherwyn v. Department of Social Services* (1985) 173 Cal.App.3d 52, 58.)

Plaintiffs do not allege a justiciable controversy regarding the rights of the parties under section 597(a) or LAMC 53.67. “Although a court must on demurrer accept as true properly pleaded facts, a demurrer does not admit contentions or conclusions of law or fact.” (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 184, fn. 11.) Here, the action wholly arose out of an altercation with law enforcement officers when plaintiffs were protesting the conduct of private persons (not parties to the action) who were allegedly killing and discarding chickens for a religious ritual. From this operative set of facts, plaintiffs make conclusory allegations—in substance, mere assertions of opinion—that the City has created a “de facto” exception to section 597(a), in that the City has a practice of not enforcing section 597(a) when violations of the statute are religiously motivated.

However, there are no facts pled to support the existence of such a policy, other than the warnings or threats of arrest allegedly made by law enforcement officers regarding the conduct of Jain and Fernandez during the protest. Plaintiffs allege no facts to support the creation or adoption of a policy by the City to create a religious exception to section 597(a). Specifically, there is no allegation explaining how the City created such an exception, such as in a legal memorandum, ordinance, or legal advice given at a public meeting. In fact, the complaint states that plaintiffs are seeking declaratory relief “to stop the City from creating this unauthorized exception to . . . section 597(a) for illegal

conduct on the basis of religion,” which indicates that no such policy exists.

Moreover, there are no facts tending to show that law enforcement declined to arrest the private, nonparties at the protest for killing and discarding chickens for the religious ritual based on the City’s alleged official position on section 597(a), or that law enforcement received a directive from the City not to do so. Although plaintiffs generally allege the City refused to allow law enforcement officers to accept private person arrest forms for religiously motivated animal killings in violation of section 597(a), there are no factual allegations to suggest that law enforcement refused to accept such forms by plaintiffs at the protest or shortly thereafter at the City’s direction.

In a similar conclusory fashion, plaintiffs opine that the City believes LAMC 53.67 is unconstitutional because such religious conduct is protected by the First Amendment. Plaintiffs agree LAMC 53.67 is unconstitutional, but dispute the legal ground allegedly relied on by the City. Again, this allegation is completely amorphous and without any factual foundation necessary for declaratory relief. There is not a single factual allegation for the origin of such a belief (written or oral) held by the City. Moreover, there is simply no controversy regarding LAMC 53.67, as both plaintiffs and the City (allegedly) believe it is unconstitutional and the City (according to the complaint) does not enforce it. Because there are no facts that show a specific issue raised and a corresponding dispute between the parties, plaintiffs have failed to properly state a claim for declaratory relief.

Plaintiffs rely on *Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495 (*Farm Sanctuary*) to support their ripeness argument. However, this case is distinguishable. In *Farm Sanctuary*, a nonprofit organization filed a declaratory relief action alleging that a state agency's regulation authorizes inhuman slaughtering of poultry and was therefore inconsistent with the Humane Slaughter Law (HSL) (Food & Agr. Code, §§ 19501-19503), which governs methods by which certain animals can be slaughtered. (*Id.* at p. 499.) The Court of Appeal held the declaratory relief action was ripe, rather than abstract or hypothetical, because it alleged the regulation is invalid on its face and potentially inconsistent with the HSL. (*Id.* at p. 502.) The court reasoned that the challenged regulation, promulgated in a formal manner after announcement and consideration of comments by interested parties, was clearly final.

Unlike the state agency's definite position as set forth in its regulation in *Farm Sanctuary*, here there are no factual allegations that the City has published or adopted any official positions, much less any regulations, which might conflict with section 597(a) or the legal reasoning behind the alleged unconstitutionality of LAMC 53.67. As previously noted, the factual allegations wholly arise from law enforcement officers allegedly threatening to arrest Jain and Fernandez regarding their activities during the protest, and allegedly committing acts of violence against Fernandez. The complaint is devoid of any specific factual allegations pertaining to the City's official position on section 597(a) as to religiously motivated conduct or as to the City's belief LAMC 53.67 is unconstitutional.

Plaintiffs have failed to allege an actual and justiciable controversy, and therefore have not demonstrated that they are entitled to declaratory relief.

C. The Bane Act

Plaintiffs contend they adequately pled a violation under the Bane Act. The complaint alleges that Jain and Fernandez were engaging in speech and assembly protected by the First Amendment when law enforcement threatened them with arrest if they continued to chant or use amplified sound during the protest.

The Bane Act provides for liability for interference or attempted interference with an individual's rights "by threat, intimidation, or coercion." (Civ. Code, § 52.1, subd. (b).) There are two distinct elements for a violation under the Bane Act. "A plaintiff must show (1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation or coercion." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 67; see *Doe v. State of California* (2017) 8 Cal.App.5th 832, 842; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 881–882.) Speech is not enough to establish the requisite threat unless it includes threat of violence. (Civ. Code, § 52.1, subd. (k); see *Center for Bio-Ethical Reform, Inc. v. The Irvine Co., LLC* (2019) 37 Cal.App.5th 97, 115.) The threat of arrest, without more, is insufficient to state a cause of action

under the Bane Act. (See *Allen v. City of Sacramento*, *supra*, at p. 66; see also *Doe v. State of California*, *supra*, at p. 843.)

The complaint does not allege law enforcement threatened Jain or Fernandez with violence, independent of the threat to arrest. Although plaintiffs argue in their appellate brief that law enforcement “intended to and did have the effect of deterring [p]laintiffs from exercising their First Amendment rights,” these facts were not alleged in the complaint. Based on the allegations, it does not appear the confrontation with law enforcement deterred plaintiffs or stopped the protest. Without more, plaintiffs have failed to plead sufficient facts to establish a violation under the Bane Act.

D. *The Ralph Act*

Plaintiffs also contend they adequately pled a violation under the Ralph Act. The complaint alleges law enforcement threatened Jain and Fernandez with arrest based on their identification as animal rights activists who are opposed to killing and discarding chickens for religious rituals. It further alleges Fernandez was physically grabbed and detained by law enforcement due to her identification as an animal rights activist who was “using a megaphone to express her beliefs.”

The Ralph Act guarantees that all persons have “the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any [listed] characteristic.” (Civ. Code, § 51.7, subd. (b)(1).) To prevail on a Ralph Act claim, a plaintiff must establish: (1) the defendant committed or threatened violent acts against the plaintiff;

(2) the defendant was motivated by their perception of the plaintiff's affiliation; (3) the plaintiff was harmed; and (4) the defendant's conduct was a substantial factor in causing the plaintiff's harm. (*Austin B. v. Escondido Union School District*, *supra*, 149 Cal.App.4th at pp. 880–881.)

“[T]he plain meaning of the word ‘violence,’ . . . ‘clearly involves some physical, destructive act.’ [Citation.]” (*Campbell v. Feld Entertainment, Inc.* (2014) 75 F.Supp.3d 1193, 1205 [discussing the definition of “violence” under the Ralph Act]; see *Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1289.) “Violence . . . demands more than ‘mere[] application of physical force.’” (*Campbell, supra*, at p. 1205.) Thus, the threat of arrest, without more, is insufficient to qualify as a “threat of violence.” (See *Ramirez v. Wong* (2010) 188 Cal.App.4th 1480, 1486 [there can be no “threat of violence” without some expression of intent to injure or damage plaintiffs or their property].) Likewise, physically grabbing and detaining Fernandez does not meet the requisite level of “violence” necessary for a violation under the Ralph Act.

E. Denial of Leave to Amend

As noted, the trial court denied plaintiffs leave to amend their complaint. Plaintiffs do not address in their appellate briefs the court's denial of leave to amend and do not suggest how they could amend the complaint.

Although we are required to decide “whether there is a reasonable possibility that the defect [in the complaint] can be cured by amendment[,] . . . [t]he burden of proving such reasonable possibility is squarely on the plaintiff” (*Zelig, supra*, 27 Cal.4th at p. 1126) by “show[ing] in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading” (*Cooper v. Leslie Salt Co., supra*, 70 Cal.2d at p. 636). Plaintiffs have not done so. Accordingly, we affirm the trial court’s denial of leave to amend.

DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal.

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WILLHITE, Acting P. J.

We concur:

CURREY, J.

MICON, J.*

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