Filed 12/18/19 Lancaster v. City of L.A. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

WALTER LANCASTER, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B288383 (Los Angeles County Super. Ct. No. BC597828)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Fruin, Judge. Affirmed.

Walter Lancaster, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Matthew A. Scherb, Deputy City Attorney, for Defendants and Respondents.

Plaintiff and appellant Walter Lancaster (Lancaster) appeals from a judgment of dismissal after the trial court sustained without leave to amend defendant City of Los Angeles's (City's) demurrer to his second amended complaint. We consider whether Lancaster alleged facts demonstrating or excusing timely compliance with statutes that require presenting a claim for damages to City officials before filing a lawsuit.

I. BACKGROUND

A. The City Impounds Lancaster's Automobile

The facts set out in this section of our opinion are those alleged in Lancaster's operative complaint. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 156-157.)

In August 2013, while Lancaster sat in his Dodge Caravan using his laptop computer, uniformed officers from the Los Angeles Police Department (LAPD) approached him. He was asked to exit his vehicle and he was placed in handcuffs.

As police officers searched Lancaster's vehicle, they "dishevel[ed]" the vehicle's interior and "destroyed," among other things, the material lining of the interior's ceiling. The officers issued Lancaster a citation for having an expired registration and impounded his vehicle.

Two days later, a City hearing officer issued a written determination that the City had "No Probable Cause" for impounding Lancaster's vehicle. Eventually, Lancaster received a refund check for the full amount of the impound fees.

B. Lancaster Sues the City

Five months after his Caravan was impounded, Lancaster filed a claim for damages with the County of Los Angeles

(County)—not the City—using a pre-printed County claim form. The County denied the claim.[1]

Later, more than two years after his car was impounded, Lancaster sued the County, the LAPD, and one of its officers—but not the City—for monetary, emotional, and psychological harm he purportedly suffered when his vehicle was impounded. Lancaster subsequently dismissed the County from the lawsuit and named the City as a defendant.

The City demurred to what, at the time, was Lancaster's first amended complaint, arguing all of Lancaster's claims were barred by his failure to comply with the California Tort Claims Act (the Act). As the City explained, the Act "requires the timely presentation of a written claim for money or damages directly to a public entity, and the rejection of that claim, as a condition precedent to a tort action against . . . the public entity."

In opposing the City's demurrer, Lancaster cited a provision of the Act now codified at Government Code section 905.1 to argue he was not required to present a pre-lawsuit claim for damages to the City. In relevant part, that statute provides: "No claim is required to be filed to maintain an action against a public entity for taking of, or damage to, private property pursuant to Section 19 of Article I of the California

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[1] Pursuant to Evidence Code sections 452 and 459, the City asks us to take judicial notice of a letter from the County to Lancaster, dated January 27, 2014, denying Lancaster's claim for damages. We deny the City's request. (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325; accord, *Verizon California Inc. v. Board of Equalization* (2014) 230 Cal.App.4th 666, 674, fn. 2.)

Constitution."[2] The trial court sustained the City's demurrer and, although Lancaster had not requested it, granted leave to amend the first amended complaint.

In a subsequently filed second amended complaint (the operative complaint), Lancaster asserted 10 causes of action: conspiracy, trespass, conversion, fraud-deceit, duress, undue influence, negligent misrepresentation, negligence, gross negligence, and intentional infliction of emotional distress. He sought $2.5 million in compensatory damages plus unspecified punitive damages.

Regarding compliance with the Act, the operative complaint averred Lancaster submitted a pre-lawsuit claim for damages to the County and attached a copy of that claim as an exhibit. The operative complaint did not allege, however, that Lancaster had ever presented a pre-lawsuit claim for damages to the City. Instead, drawing on and quoting from Government Code section 905.1, Lancaster asserted he was not required to present such a claim because the damage to his vehicle qualified as a taking of, or damage to, private property under the aforementioned constitutional eminent domain provision.[3]

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[2] Article I, section 19 of the California Constitution requires state and local governments exercising eminent domain powers to pay just compensation when taking private property for public use.

[3] In addition, Lancaster alleged that on the day he filed his claim with the County he "approached the Los Angeles City Hall East lobby and indicated [he] sought to file a 'Claim for Damages'. [Lancaster] relied on the City Hall East lobby receptionist information as became directed to the Kenneth Hahn

The City demurred to the operative complaint, arguing as it had in its previous demurrer that all of Lancaster's claims were barred by Lancaster's failure to present a pre-lawsuit claim for damages to the City as required by the Act. As before, Lancaster responded by arguing no timely presentation of an administrative claim for damages was required because the causes of action asserted against the City fell within the scope of section 905.1's exemption for eminent domain and inverse condemnation cases. Lancaster's opposition to the City's demurrer did not request further leave to amend the operative complaint and did not identify any facts he could allege to avoid dismissal of his claims for failure to comply with the Act's claim presentation requirements.

At a hearing in August 2017, the trial court found "[Lancaster] fail[ed] to allege compliance with the pre-lawsuit requirements" of the Act.[4] On that basis (and other legal grounds we need not discuss), the court sustained the City's demurrer without leave to amend. A judgment of dismissal followed.

II. DISCUSSION

Lancaster maintains, as he did in the trial court, that he was under no obligation whatsoever to timely present an administrative damages claim to the City for the damage

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Building by the lobby receptionist at City Hall East and entered a 'Claim for Damages' at that location."

[4] The appellate record does not include a reporter's transcript of the demurrer hearing or a settled or agreed statement regarding the proceedings. All the record does include is a written ruling with one paragraph of substantive analysis.

allegedly done to his vehicle when it was impounded. Lancaster is wrong about that. The Act does require presentation of such a damages claim and Government Code section 905.1, which provides an exception to claim presentation requirements for eminent domain or inverse condemnation challenges, has no application to the causes of action brought by Lancaster in his operative complaint. Because Lancaster has not alleged facts showing he complied with the Act or was excused from complying, the trial court correctly sustained the City's demurrer to the operative complaint. Lancaster made no showing of how he could amend his pleading to cure the defect in the trial court or in this court, so we shall affirm the judgment of dismissal.[5]

A. Standard of Review

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.*, *supra*, 4 Cal.5th at p. 162.) "If the demurrer was sustained without leave to amend, we consider whether there is a 'reasonable possibility' that the defect

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[5] Lancaster also argues the trial court erred when it sustained with leave to amend the City's untimely and allegedly improperly served demurrer to the *first* amended complaint. Lancaster, however, waived any claims of procedural irregularity as to the City's demurrer to that earlier pleading (see *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 696-698), and the record is in any event inadequate to overcome the presumption of correctness that attaches to the trial court's discretionary ruling in considering the first amended complaint. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*); *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483.)

in the complaint could be cured by amendment. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742 [ ].) The burden is on plaintiff[ ] to prove that amendment could cure the defect. (*Ibid*.)" (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1050.)

B. Tort Claim Presentation Requirements

"[Government Code s]ection 905 requires the presentation of 'all claims for money or damages against local public entities'" to the responsible public entity before a lawsuit is filed. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737-738.) The term "local public entity" includes a city. (Gov. Code, § 900.4; *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374.) A claim relating to a cause of action for personal injury or injury to property, i.e., the sort of claims Lancaster advances in the operative complaint, must be presented to the local public entity "not later than six months after the accrual of the cause of action." (Gov. Code, § 911.2, subd. (a).)

Under the Act, "failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239, fn. omitted (*Bodde*); accord, Gov. Code, § 945.4; see also *City of Stockton v. Superior Court*, *supra*, 42 Cal.4th at p. 738 ["'It is well-settled that claims statutes must be satisfied even in face of the public entity's actual knowledge of the circumstances surrounding the claim'"].) "'[T]he filing of a claim for damages "is more than a procedural requirement, it is a condition precedent to plaintiff's maintaining an action against defendant, in short, an integral part of plaintiff's cause of action."'" (*Bodde*, *supra*, at p. 1240.) "[F]ailure to allege facts demonstrating or excusing compliance

with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*Id.* at p. 1239, fn. omitted.)

C. The Trial Court Correctly Sustained the Demurrer

The operative complaint does not allege Lancaster ever presented a pre-lawsuit claim for damages to the City, much less presented one within the applicable statutory deadlines. Instead, the operative complaint, Lancaster's opposition to the City's demurrer, and Lancaster's appellate briefing only assert he need not comply with the claim presentation statutes because such compliance is not required under Government Code section 905.1 for causes of action concerning eminent domain or inverse condemnation. That argument fails.

Our Supreme Court has held article I, section 19 of the state Constitution (Section 19) applies only in the realm of eminent domain—that is, where the government physically takes or damages property in the construction, operation, or maintenance of a "public improvement"—or to regulations which are the "functional equivalent" of condemnation. (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 377-378 (*Customer*).)

In *Customer*, a criminal suspect took refuge in a retail store. "In the course of apprehending the suspect, the police fired tear gas into the store, causing extensive property damage." (*Customer*, *supra*, 10 Cal.4th at p. 371.) The owner of the store brought "an action for inverse condemnation against the public entities that employed the law enforcement officers, on the theory that the damage caused by the officers constituted a taking or damaging of private property for public use within the meaning of the 'just compensation' clause of the California Constitution."

(*Ibid*.) Our Supreme Court held that "under the circumstances presented . . . the public entities involved may be held liable, if at all, only in a tort action filed pursuant to [the Act]." (*Ibid*.)

In reaching its decision in *Customer*, our high court reviewed the history and application of Section 19 and observed Section 19 had "never . . . been applied to require a public entity to compensate a property owner for property damage resulting from the efforts of law enforcement officers to enforce the criminal laws." (*Customer*, *supra*, 10 Cal.4th at pp. 377-378.) Section 19, *Customer* reasoned, "never was intended, and never has been interpreted, to impose a constitutional obligation upon the government to pay 'just compensation' whenever a governmental employee commits an act that causes loss of private property." (*Id*. at p. 378; accord, *Williams v. Moulton Niguel Water Dist*. (2018) 22 Cal.App.5th 1198, 1207-1211 [holding homeowners' inverse condemnation claim was in fact a claim for tort liability which precluded recovery under Section 19].)

Government Code section 905.1 does not apply here because the damage to Lancaster's vehicle was not done in the construction, operation, or maintenance of a public improvement. Rather, the damage was done incident to routine law enforcement activity. Lancaster was therefore obligated to comply with the provisions of the Act if he wanted to recover damages beyond the improperly assessed impound fees. He does not allege such compliance, and the operative complaint is fatally defective for that reason.

D. Lancaster Has Not Demonstrated the Trial Court Abused Its Discretion by Denying Leave to Amend

"'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Denham*, *supra*, 2 Cal.3d at p. 564.) "In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court." (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.)

The California Rules of Court require an appellant to provide a reporter's transcript if "an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court . . . ." (Cal. Rules of Court, rule 8.120(b).) Where the standard of review is abuse of discretion, as it is here, a transcript or settled statement is in many cases indispensable. (*Southern California Gas Co. v. Flannery*, *supra*, 5 Cal.App.5th at p. 483.)

The record on appeal does not include a reporter's transcript (or a settled or agreed statement) memorializing what transpired during the demurrer hearing. Nor does it contain any document in which Lancaster sought leave to amend the operative complaint. Consequently, there is no record on which we could hold the trial court mistakenly refused to permit further amendment of the operative complaint.

In addition, and recognizing that a showing of a viable theory of amendment may be made for the first time on appeal

(see, e.g., *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371), Lancaster has not said how his pleading could be amended to state facts that would avoid dismissal of his suit for noncompliance with the Act. (*Bodde*, *supra*, 32 Cal.4th at p. 1237 ["As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. [Citation.] The failure to do so bars the plaintiff from bringing suit against that entity"]; see also *Cantu v. Resolution Trust Corp*. (1992) 4 Cal.App.4th 857, 890 [the burden to show what facts could be pleaded if allowed the opportunity to replead "falls squarely on [plaintiff]"].) There being no demonstration in this court or the trial court of a viable theory of amendment, denial of leave to amend was not an abuse of discretion.

DISPOSITION

The judgment is affirmed. The City of Los Angeles is awarded costs on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.