Filed 3/26/18 Johnson v. Los Angeles County MTA CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KELLY L. JOHNSON, Plaintiff and Appellant, v. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, Defendant and Respondent.	B276131 (Los Angeles County Super. Ct. No. BC537265)

APPEAL from a judgment of the Superior Court of Los Angeles County Superior Court, Donna F. Goldstein, Judge. Reversed.

Gusdorff Law and Janet R. Gusdorff; The Aarons Law Firm, Martin I. Aarons and Shannon H. Pagel; Law Offices of David H. Greenberg, David H. Greenberg and Emily A. Ruby for Plaintiff and Appellant.

Briskin, Lang & Pene and Katherine B. Pene for Defendant and Respondent.

INTRODUCTION

The statute of limitations for a personal injury cause of action against a public entity is six months or two years, depending on, among other things, whether the public entity gives proper notice of denial of the administrative claim preceding the lawsuit. The plaintiff in this case filed his personal injury action seven months after the public entity denied his administrative claim, but less than two years after the accident that he claimed caused his injury. Therefore, one of the issues in the case was whether the public entity's notice of denial of the claim was proper; i.e., complied with the applicable statutory requirements for giving notice.

The trial court bifurcated and tried that issue first. After the plaintiff, Kelly Johnson, rested, the court granted a motion by the defendant, the Los Angeles County Metropolitan Transit Authority (MTA), for nonsuit. The court ruled the MTA had given proper notice of its denial, and therefore the six-month statute of limitations barred Johnson's action.

Johnson argues the trial court erred by requiring him to prove the statute of limitations, an affirmative defense, did not bar his action, rather than requiring the MTA to prove the statute of limitations did bar his action. Johnson also argues he presented enough evidence in his case-in-chief for the jury to find in his favor on the statute of limitations issue. We agree with Johnson on both points, and reverse.

FACTUAL AND PROCEDURAL HISTORY

A. *Pretrial*

Johnson filed an administrative claim with the MTA under the Government Claims Act, Government Code section 900 et seq.,[1] alleging an MTA bus hit him while he was riding his bicylce. The MTA received Johnson's administrative claim on June 11, 2013 and denied it on July 2, 2013.

On February 25, 2014 Johnson filed this action against the MTA for personal injury, alleging that an MTA bus hit him and that he had "complied with applicable claims statutes." The MTA's answer alleged as an affirmative defense that the statute of limitations barred Johnson's action. The MTA also claimed Johnson hit the bus.

The MTA filed a motion for summary judgment on its affirmative defense of statute of limitations, which the trial court denied. The MTA also filed a motion under Code of Civil Procedure section 597 to bifurcate the trial and try its statute of limitations defense first. The trial court granted that motion.

B. *Trial*

Two witnesses testified at the first phase of the bifurcated trial. The claims adjuster, Brigitte Carroll-Anderson, stated she prepared a letter rejecting Johnson's claim and addressed it to Johnson's attorney, David Greenberg. She also prepared a proof of service for the rejection letter, on which she typed Greenberg's address and the name of the person who was going to take care of mailing the rejection letter, Frank Moran. Carroll-Anderson gave Moran the rejection letter and proof of service and told him,

---

[1] Undesignated statutory references are to the Government Code.

"Send these by certified mail, return receipt requested." Carroll-Anderson chose this method of mailing because it would provide evidence the MTA had properly mailed the letter. Carroll-Anderson maintained an activity log to keep track of all the cases she handled.

Carroll-Anderson did not receive the return receipt slip attached to the certified mail envelope indicating the envelope had been delivered to Greenberg's office. After Johnson filed his lawsuit, she attempted to track the delivery of Johnson's rejection letter by entering the tracking number from the certified mail envelope into the United States Post Office website to see if the letter was delivered. She viewed the information on her computer screen, but did not print out the results. Counsel for Johnson read into the record a portion of Carroll-Anderson's deposition about the information she viewed when she researched the mailing issue by entering the tracking number on the postal website: "But you really can't tell, I mean, if it was delivered because I don't know if this is the correct tracking number." The tracking number was the only tracking number noted in the activity log for Johnson's rejection notice.[2]

Moran testified he was an assistant for 20 to 25 claims adjusters, including Carroll-Anderson. His duties included "structuring letters, rejection letters, letters of insufficient claims, correspondence, mailing, [and] actually seeing that the mail was . . . processed for delivery by the mailroom." He described in detail his general practice for mailing the items he

---

[2] Johnson attempted to introduce evidence of a printout of the tracking number information from the United States Post Office website, showing that the MTA sent the notice of rejection of his claim to the wrong address. The trial court, however, sustained the MTA's hearsay objection to the document and any testimony about it.

received from the claims adjusters. Moran stated that each day he processed approximately 15 notices rejecting claims. He scanned and photocopied the letters, prepared the green certified mail slips, and created labels for mailing "based on the list that [he] had, that were to go out on a given day." He made mailing labels for the certified mail envelope, the return receipt slip, the postcard the U.S. postal service was supposed to return to the sender upon delivery, and the regular mail envelope. Each label had the same address for the recipient. When Moran received rejection notices from the claims adjusters, the proofs of service were already filled out, and all he had to do was sign the proof of service.

After Moran prepared the envelopes, he placed them in a basket near his cubicle. Another clerical employee picked up the mail and took it away. Moran was not familiar with "the business practice for collection and processing of correspondence," did not know how the mailroom operated, and did not personally place the rejection notices in the mail. Moran kept a record of the tracking numbers for the certified mail, return receipt envelopes and maintained them on a spreadsheet, where he also typed in the name of the claimant, the type of document he had mailed, the date he received the document from the claims adjuster, and the date he placed the document in the mail basket. Sometimes Moran went to the United States Postal Service website to check the tracking number of an item he placed in the mail basket and noted he had done so in the activity log. When there was a dispute about whether the letter had been properly delivered, Moran relied on the information about the tracking number he obtained online to be accurate and trustworthy to confirm the claimant had received the item.

Moran was unable to testify about any specific facts regarding the mailing of the letter rejecting Johnson's claim or

the proof of service. He had no recollection of what he did in Johnson's case. A proof of service with Moran's signature stated he mailed the notice of rejection to Greenberg on July 2, 2013, but it did not specify whether the method of mailing was by regular mail, certified mail, or both. Moran's activity log showed that he mailed the notice of rejection and the proof of service to Greenberg on July 2, 2013 and that he sent a copy by regular mail. The log also showed the tracking number for the certified mail envelope. Moran did not see any notation in his records indicating he made a mistake in typing the tracking number into the activity log. Moran admitted he had testified in his deposition that the first time he ever saw the proof of service was the day before the deposition on April 9, 2015. Moran never received the return receipt slip attached to the certified mail envelope to confirm the envelope had been delivered to Greenberg's office, nor did he ever receive or see any other confirmation that the envelope had been delivered to the right address. On the other hand, neither the certified mail envelope nor the regular mail envelope was returned as "undeliverable" or "refused."

C. *Nonsuit*

After Johnson rested, the MTA moved for a nonsuit. The MTA argued Johnson had not presented any evidence the MTA had not mailed the required notice. Johnson argued a jury could find Moran typed the labels incorrectly because the MTA failed to produce any evidence showing the results of Carroll-Anderson's investigation after she attempted to track the delivery of the rejection letter the MTA sent by certified mail.

The court stated that Johnson had the burden to show the MTA addressed the letter improperly.[3] The court also stated that, even if the tracking record were admissible, it would not have been sufficient to prove the MTA sent the rejection notice to the wrong address because "that tracking could as easily been input wrong, be a postal service error." The court ruled that the proof of service was "presumed accurate" and that Moran's statement about his general business practices "was sufficient" to demonstrate compliance with the applicable statutes governing proofs of service. The court noted the postal service could have delivered the letter to the wrong address, but found the inference the address on the envelope was incorrect was "extraordinarily weak," and the court faulted Johnson for not inquiring about the status of his claim. The court ruled Johnson's only evidence the MTA had incorrectly addressed the envelope was the printout of the tracking number, which the court had excluded.

The court granted the motion for nonsuit and entered judgment for the MTA. Johnson timely appealed.

DISCUSSION

A. *Standard of Review*

"In reviewing a judgment of nonsuit, 'we must view the facts in the light most favorable to the plaintiff. "[C]ourts traditionally have taken a very restrictive view of the

---

[3] At a pretrial hearing, the court ruled that Johnson had the burden of proving the MTA had not properly mailed the notice of rejection because he had the "obligation" to prove "compliance with the [Government] Code, the Claims Act" when he was "outside the statute of limitations." The court also ruled that, because a proof of service "is presumed accurate under the law," Johnson had the burden "to show it's not true."

circumstances under which nonsuit is proper. The rule is that a trial court may not grant a defendant's motion for nonsuit if plaintiff's evidence would support a jury verdict in plaintiff's favor. [Citations.] [¶] In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give 'to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor. . . .'" [Citation.] The same rule applies on appeal from the grant of a nonsuit.'" (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 347; accord *Petitpas v. Ford Motor Co.* (2017) 13 Cal.App.5th 261, 286; see *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 839 ["'[t]he judgment of the trial court cannot be sustained unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law'"]; *McNair v. City and County of San Francisco* (2016) 5 Cal.App.5th 1154, 1168-1169 ["[r]eversal of a judgment of nonsuit is warranted if there is 'some substance to plaintiff's evidence upon which reasonable minds could differ'"].)

B. *The Applicable Provisions of the Government Code*

"Suits for money or damages filed against a public entity are regulated by statutes contained in division 3.6 of the Government Code, commonly referred to as the Government Claims Act. We have previously noted that '[s]ection 905 requires the presentation of "all claims for money or damages against local public entities" . . . . "[N]o suit for money or

damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon . . . or has been deemed to have been rejected. . . .' [Citation.] "Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity."'" (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 989-990.) "'The filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an *element* that a plaintiff is required to prove in order to prevail.'" (*Id.* at p. 990; accord *A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257; see *State of California v. Superior Court* (*Bodde*) (2004) 32 Cal.4th 1234, 1243 [the claim presentation statutes "'make[ ] it clear that . . . a plaintiff must . . . allege in his complaint that he has complied with the claim statute in order to state a cause of action against a public employee'"]; see also *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 652 ["[i]f a complaint does not allege facts showing that a claim was timely made, or that compliance with the claims statutes is excused, it is subject to demurrer"].)

Once a person has filed a claim under section 954.4, and the public entity has denied it,[4] section 945.6 prescribes the statutory deadlines for commencing a civil action. (See *Mandjik v. Eden Township Hospital Dist.* (1992) 4 Cal.App.4th 1488, 1499

---

[4] Section 945.4 provides, in relevant part, that "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . ."

(*Mandjik*) [section 945.6, subdivision (a), "sets forth the statutes of limitations for filing a complaint"].) Section 945.6 provides that a plaintiff must file a cause of action against a public entity as follows: "(1) If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered or deposited in the mail. [¶] (2) If written notice is not given in accordance with Section 913, within two years from the accrual of the cause of action. . . ." "The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209.)

Section 913, subdivision (a), to which section 945.6 refers, provides that "[w]ritten notice of the action . . . or the inaction that is deemed rejection . . . shall be given in the manner prescribed by Section 915.4." Section 915.4, in turn, provides that government entities must give notice of their decisions on claims either by personal delivery or by "[m]ailing the notice to the address, if any, stated in the claim or application . . . ." Section 915.2 provides that, if the government entity gives notice by mail, the notice must be "deposited in . . . a mailbox . . . in a sealed envelope, properly addressed, with postage paid," and that the "notice shall be deemed to have been presented and received at the time of the deposit."

If the government entity does not comply with section 913, the statute of limitations for filing a civil action is two years. (§ 945.6, subd. (a)(2); see *S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 717 ["[i]f the public entity does not give written notice that the claim has been rejected (§ 913), the

plaintiff has until two years from the date her cause of action accrued to sue the entity"]; *Mandjik*, *supra*, 4 Cal.App.4th at pp. 1499, 1500, 1504 [where the public entity fails to give written notice of rejection in accordance with section 913, the statute of limitations is two years]; *Rason v. Santa Barbara City Housing Authority* (1988) 201 Cal.App.3d 817, 822 ["[i]f the rejection is not properly noticed in accordance with section 913 . . . the action may be filed in court within two years from the accrual of the cause of action"].) Because Johnson filed his civil action more than six months after the MTA claims it mailed the notice of rejection, but less than two years after the date of the accident, the timeliness of this action depends on whether the MTA properly mailed the notice of rejection under section 913. This was the issue the trial court bifurcated and tried first.

C. *The Trial Court Erred in Granting the MTA's Motion for Nonsuit*

1. *The Trial Court Erred in Placing the Burden on Johnson To Prove His Action Was Not Barred by the Statute of Limitations*

The trial court erred by making Johnson disprove that the statute of limitations did not bar his cause of action, rather than requiring the MTA to prove that it did. The trial court's ruling was based on the erroneous assumption that, because the plaintiff has the burden to prove he complied with the claims presentation requirement of the Government Claims Act, the plaintiff also has the burden to prove timely filing of a civil action.

But that's not how it works. The procedural requirements for claim presentation, compliance with which is a prerequisite to

suing a public entity under section 945.4, are distinct from the requirement of filing of a lawsuit within the applicable statute of limitations, which is governed by section 945.6. To comply with the claim presentation requirement of section 945.4, the plaintiff need only allege and prove that he or she timely filed the claim (*Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal.App.5th 547, 549; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1237) and that the public entity acted on the claim (*Shirk v. Vista Unified School Dist.*, *supra*, 42 Cal.4th at p. 208). Even the case on which the MTA relies, *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, states: "A plaintiff may allege compliance with the claims requirements by including a general allegation that he or she timely complied with the claims statute." (*Id.* at p. 374.)[5]

As with other affirmative defenses, the defendant has the initial burden to show a cause of action is barred by the statute of limitations. (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1197; *Samuels v. Mix* (1999) 22 Cal.4th 1, 8-9; *Drexler v. Petersen* (2016) 4 Cal.App.5th 1181, 1188; *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 174.) In the context of section 945.6, the public entity has the burden to prove its agents properly mailed the rejection notice so that the six-month limitations period under section 945.6 applies. (See *Him v. City and County of San Francisco* (2005) 133 Cal.App.4th 437, 445 [six-month, rather than two-year, statute of limitations applies "upon proof" by the public entity "that the notice of

---

[5] The court in *Gong* also stated "the timely filing of a written claim" under section 945.4 is "an element of a valid cause of action against a public entity," but the court did not discuss the statute of limitations under section 945.6. (*Gong v. City of Rosemead*, *supra*, 226 Cal.App.4th at p. 374.)

rejection was served"]; *Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1213 [six-month limitations period under section 945.6 applied where public entity submitted the declaration of an assistant claims manager "to establish mailing of the notice of rejection"].) Nothing in the language of section 945.6 suggests the Legislature intended to change the general rule. (See Evid. Code, § 500 ["[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"].)

Johnson alleged and submitted evidence he complied with section 945.4 by timely filing his claim, and he complied with section 945.6, subdivision (a)(2), by filing his civil action within two years of his accident. It was up to the MTA to show, by proving it gave notice of its denial of Johnson's claim in compliance with section 913, that the six-month limitations period, rather than the two-year period, applied. Yet, the trial court ruled Johnson had the burden to show the MTA's noncompliance with section 913. The court also required Johnson to present his evidence first in the bifurcated trial on the MTA's affirmative defense. The trial court then granted nonsuit in favor of the MTA's affirmative defense after Johnson rested and before the MTA had called any witnesses. All three rulings were erroneous.

2. *There Was Sufficient Evidence To Support a Jury Finding in Favor of Johnson on the MTA's Statute of Limitations Defense*

In addition to the trial court's procedural errors in conducting the bifurcated trial on the MTA's statute of limitations defense, the court erred in granting the MTA's motion for nonsuit based on the evidence the parties presented during

the first phase of the trial. That evidence, even though the court placed the burden of production on the wrong party and had the jury hear it in the wrong order, was sufficient to have the jury decide the statute of limitations issue.

Although the court may grant a motion for nonsuit on an affirmative defense where the plaintiff's evidence establishes the defense (see *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 285), the evidence Johnson and the MTA elicited during Johnson's presentation of his case did not establish the MTA complied with section 913. Indeed, drawing all reasonable inferences in favor of Johnson (see *O'Neil v. Crane Co.*, *supra*, 53 Cal.4th at p. 347), the evidence tended to establish the opposite.

For example, the proof of service the MTA argues conclusively established Moran properly mailed the notice did no such thing. Moran admitted that the first time he saw the proof of service for Johnson's rejection notice was the day before his deposition in this case, well over a year after the date on the proof of service. Moran's admission suggested that he never saw the proof of service the day he supposedly signed it. Thus, Moran's testimony tended to negate what the proof of service stated; i.e., that he mailed the notice in compliance with section 913.

Moran also could not recall any specific facts about Johnson's claim, did not know how or whether the MTA had "processed" the notice of rejection for mailing (as the proof of service stated), did not know whether anyone at the MTA put the correct postage on the letter and placed it where it would be mailed, and did not know how the mailroom operated.[6] It was a

---

[6] The trial court ruled the proof of service was "presumed accurate." Under Code of Civil Procedure 1013a, subdivision 3, however, a proof of service by mail must state, among other

reasonable inference from Moran's testimony that the MTA did not properly mail the notice rejecting Johnson's claim. (Cf. *Him v. City and County of San Francisco*, *supra*, 133 Cal.App.4th at p. 444 [proofs of service "included express representations by the claims adjuster that on a specific day . . . she sealed each claim rejection notice in a postage-paid enveloped addressed to the attorney for plaintiffs, and deposited each in the United States Mail"]; *Katelaris v. County of Orange*, *supra*, 92 Cal.App.4th at p. 1214 [office technician's declaration was sufficient evidence of mailing because he stated he picked up the outgoing mail from the claims adjuster's desk, typed the envelopes, enclosed the letters, affixed the required postage, and placed the letters in a box provided by the United States Post Office].)

Carroll-Anderson's testimony provided additional evidence that could support a verdict for Johnson on the MTA's statute of limitations defense. She stated she never received a return receipt for the certified mail envelope, from which the jury could reasonably have inferred that the letter was not properly addressed or even mailed at all.[7] (See *Edgington v. County of San Diego* (1981) 118 Cal.App.3d 39, 44 ["'[w]hether or when the claim was deposited in the mail is a question of fact [citation] and

---

things, that the person making the service "is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service." Moran admittedly was not readily familiar with the processing of correspondence for mailing.

[7] Because all the labels had the same address, if Moran made a mistake on the certified mail label, as the evidence suggests, that same mistake would have appeared on the regular mail label.

the return receipt is better evidence of the fact than the proof of mailing by the permissive method of affidavit or certification"'].)

Finally, Carroll-Anderson sought to confirm delivery of the certified mail envelope using the tracking number. After viewing the results of her search on the postal website, she decided not to print the result, and at trial she did not explain why she chose not to preserve a record of her investigation. These gaps in the evidence suggested the information she found was unfavorable to the MTA. (See Evid. Code, § 413 ["[i]n determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider . . . the party's failure to explain or to deny by his testimony such evidence or facts in the case against him"].) That Carroll-Anderson attempted to discredit the (undisclosed) results of her research by questioning whether the tracking number was correct only strengthens the inference that the information she found revealed the envelope had not been properly mailed.

Therefore, there was sufficient evidence, and reasonable inferences from the evidence, to support a verdict in Johnson's favor on the statute of limitations issue. In the end, the evidence may not have carried the day. But it was not the end of the day. Accepting Johnson's evidence as true and resolving all inferences and doubts in its favor, it was enough to survive nonsuit. The trial court erred in crediting the evidence and inferences favorable to the MTA and disregarding the evidence and inferences favorable to Johnson. (See *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291 ["'[i]n determining whether plaintiff's evidence is sufficient'" to defeat a motion for nonsuit, "'the court may not weigh the evidence or consider the credibility of witnesses'"]; *Darbun Enterprises, Inc. v. San Fernando Community Hospital* (2015) 239 Cal.App.4th 399, 410 [trial court erroneously weighed evidence and made credibility

determinations in granting nonsuit]; see also *Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 700, fn. 10 ["on appeal from a nonsuit rendered against them, plaintiffs may rely on that portion of testimony . . . which is favorable to them, and disregard that which is unfavorable"]; *North Counties Engineering, Inc. v. State Farm General Ins. Co.* (2014) 224 Cal.App.4th 902, 920 [same].)

The MTA argues the trial court properly granted the motion for nonsuit because Johnson failed to contact the MTA to check on the status of his administrative claim. The failure by Johnson and his attorney to investigate the status of the claim may have supported a jury verdict in favor of the MTA on the statute of limitations issue. But it did not entitle the MTA to nonsuit. Section 945.6 does not require a claimant to monitor the status of his or her claim.

The two cases MTA cites, *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263 and *Dowell v. County of Contra Costa* (1985) 173 Cal.App.3d 896, are distinguishable. In *County of Los Angeles v. Superior Court* the court cited the language of section 945.6 stating that the six-month statute of limitations applies "[i]f the public entity deposits written notice of rejection in the mail," and the court noted the "notice of the denial was deposited in the mail and sent to [the plaintiff's attorney]." (*Id.* at pp. 1268, 1270.) Unlike Johnson, however, the plaintiff in that case did not argue the public entity had not properly mailed the notice of rejection. The court commented that counsel for the plaintiff "was obligated to inquire as to the status of the claim" in response to the plaintiff's argument that he had never received the notice, not that the public entity had never mailed it. (*Id.* at p. 1271.) The case did not involve compliance with section 913. (See *In re Chavez* (2003) 30 Cal.4th 643, 656 ["a case is authority only for a proposition actually

considered and decided therein"]; *Picerne Construction Corp. v. Castelllino Villas* (2016) 244 Cal.App.4th 1201, 1214-1215 ["[a] case is not authority for propositions not considered and decided"].) Similarly, in *Dowell v. County of Contra Costa*, *supra*, 173 Cal.App.3d 896 the plaintiff did "not claim that notice was not served by the County," and in fact admitted she had received the rejection notice. (*Id.* at p. 901.) It was in this context the court commented the plaintiff had a duty to investigate the exact date on which the public entity mailed the rejection. (*Id.* at pp. 901-902.) Neither *Dowell* nor *County of Los Angeles* imposed on claimants the duty to inquire about the status of a claim where, as here, there was evidence the public entity did not properly mail the notice of rejection.[8]

DISPOSITION

The judgment is reversed and the matter is remanded for a new trial. Johnson's motion for judicial notice is denied as unnecessary to our decision. (*City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th 567, 594, fn. 13.) Johnson is to recover his costs on appeal.

---

[8] Because we are vacating the judgment based on the trial court's error in granting the MTA's motion for nonsuit, we do not reach Johnson's argument the trial court abused its discretion in excluding the postal service tracking record. The trial court will have another opportunity to rule on the admissibility of that document based on the evidence and arguments presented at the new trial. The award of costs in favor of the MTA is also vacated.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.*

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