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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FARSHID GAVASIEH et al.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY,

Real Party in Interest.

B266980

(Los Angeles County

Super. Ct. Nos. BC540593, BC498827)

APPEAL from an order of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Petition granted.

Law Office of Burg & Brock, Cameron Y. Brock and Craig D. Rackohn for
Petitioners.

Gibeaut, Mahan & Briscoe, Gary R. Gibeaut, Sally G. Kushner and Julie A.
Mullane for Real Party in Interest.

Plaintiffs, Farshid Gavasieh and Sanaz Motazedian, have filed a mandate petition challenging an order dismissing their second amended personal injury complaint. The date of the accident is alleged to be October 23, 2012. We conclude plaintiffs should have been granted leave to amend to allege facts showing compliance with the claims filing requirement.

Plaintiff's pleadings have all been Judicial Council Form complaints. Plaintiffs' original complaint, filed May 26, 2014, did not name defendant, Los Angeles County Metropolitan Transportation Authority. Defendant was first named pursuant to Code of Civil Procedure section 472 in an amendment filed October 24, 2014. The first amended complaint merely alleges that plaintiffs complied with all applicable claims requirements. Defendant demurred to the first amended complaint. The demurrer was sustained with leave to amend.

On April 10, 2015, plaintiffs filed their second amended complaint. Plaintiffs' second amended complaint alleges there was compliance with the applicable claims statutes. In the alternative, plaintiffs allege they did not receive notice of the rejection of their government claim. Defendant demurred to plaintiffs' second amended complaint. The judicially noticeable documents show plaintiffs filed government claims with defendant dated February 18, 2013. The claims were accompanied by a cover letter signed by plaintiffs' counsel dated February 19, 2013. The claims contain a file stamp showing they were received by "LEGAL SERVICES" on February 22, 2013. Further, the judicially noticeable documents demonstrate on April 26, 2013 defendant rejected plaintiffs' government claims. The rejection notices is contained a separate proof of service indicating the document was served on plaintiffs' counsel on April 26, 2013 by mail. Additionally, there are return receipts for the mailed rejection notices. Based on the foregoing, the trial court sustained the demurrer without leave to amend. We conclude leave to amend should have been granted for the sole purpose of allowing plaintiffs to specifically plead why the statute limitations is inapplicable.

Because defendant is a government entity, plaintiffs are required to plead with particularity all facts showing it is liable for their injuries. (*Lopez v. Southern Cal. Rapid*

Transit Dist. (1985) 40 Cal.3d 780, 795; *Hood v. Hacienda La Puente Unified Sch. Dist.* (1998), 65 Cal.App.4th 435, 439.) A corollary of this rule is that a plaintiff suing a public entity must plead facts showing or excusing compliance with the claims filing requirement. (*State of California v. Superior Court* (2004) 32 Cal. 4th 1234, 1243 [“a plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement”]; see *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1236; *Ovando v. County of Los Angeles* 159 Cal.App.4th 42, 65; *Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1246.)

Here, the showing made with judicially noticeable documents demonstrates the claim rejection forms were mailed on April 26, 2013. The Code of Civil Procedure section 472 fictitiously named defendant amendment was filed on October 24, 2014. Absent evidence (or in this case allegations) of conduct excusing compliance with the claims filing requirement, the October 24, 2014 amendment was untimely. (Gov. Code, § 945.6, subd. (a); *J.M. v. Huntington Beach Union High School Dist.* (2015) 240 Cal.App.4th 1019, 1027.) Here, there is a nonspecific allegation in the second amended Judicial Council form complaint that the claimed rejection forms were never received. We agree that there is no requirement of a strict judicially imposed particularity requirement concerning compliance with the claims requirement. But our Supreme Court has emphasized there must be facts alleged demonstrating compliance or inability to comply with the claims filing requirement: "Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234,] 1245)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209.) Here, there are insufficient facts alleged to support compliance with or inability to comply with the claims filing requirement. In this regard, we agree with respondent court that plaintiffs failed to comply with their duties to properly plead compliance with the claims filing requirement.

However, we agree with plaintiffs that they are entitled to leave to amend to allege more specific facts concerning their nonreceipt of the claim rejection forms. No doubt, there is a rebuttable presumption that the rejection forms were in fact mailed. (Evid. Code, § 664; *Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1206, fn. 8.) Further, a proof of service creates a rebuttable presumption that a document was in fact mailed. (Evid. Code § 641.) However, if the claim rejection forms were never received at the address listed on the proof of service, this creates a triable controversy as to whether they were mailed in the first place. (*Grade v. Mariposa County* (1901) 132 Cal. 75, 76-77; *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 420-422; *Conservatorship of Wyatt* (1987) 195 Cal.App.3d 391, 396-397; *Berger v. Limon* (1963) 214 Cal.App.2d 149, 151-152.) Thus, there is a triable controversy as to whether the claim rejection forms were mailed. Plaintiffs are entitled to leave to amend to more specifically allege facts concerning nonreceipt of the claim rejection forms. Obviously, if plaintiffs fail to more specifically allege the facts underlying their nonreceipt of the claim rejection forms, respondent court will be well justified in dismissing the operative pleading.

Finally, defendant has failed to demonstrate the relation back doctrine is inapplicable. The respondent court ruled that plaintiffs' claim forms demonstrate they were not actually ignorant of defendant's liability when the original complaint was filed. But, the relevant test is what the evidence demonstrates the plaintiff *actually* knew at the time the original complaint was filed about the defendant's culpability. (*General Motors Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 588; see Rylaarsdam et al., Cal. Practice Guide: Civil Procedure Before Trial Statutes of Limitations (The Rutter Group 2015) ¶ 8:56, p. 8-6.) And, even if the plaintiff is negligent or fails to exercise reasonable diligence in discovering potential culpability on the part of the defendant, the relation back doctrine still applies. (*Irving v. Carpentier* (1886) 70 Cal. 23, 26; *Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1170.) Here, the sole evidence relied upon by defendant to show actual knowledge, the claim forms, does not demonstrate what plaintiffs actually knew about its culpability. The relation back doctrine is controlling here.

The petition is granted. Let a peremptory writ of mandate issue directing that the respondent court set aside its order sustaining the demurrer without leave to amend. Upon remittitur issuance, a new order is to be entered granting leave to amend. Plaintiffs, Farshid Gavasieh and Sanaz Motarzedian, shall recover their costs incurred on appeal from defendant, Los Angeles County Metropolitan Transportation Authority.

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TURNER, P. J.

We concur:

BAKER, J.

KIRSCHNER, J.^{*}

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