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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TAMARA N. HARRIS,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B284698

(Los Angeles County  
Super. Ct. No. BC583955)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Benny C. Osorio, Judge. Affirmed.

Tamara N. Harris, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant  
City Attorney, Michael M. Walsh, Deputy City Attorney, for  
Defendant and Respondent.

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Tamara N. Harris, representing herself as she did in the trial court, appeals the judgment entered after an order granting the City of Los Angeles's motion for judgment on the pleadings. On appeal Harris concedes she filed her personal injury action after the limitations period for her claim had run, explaining she had no other option because the attorney she had retained to represent her in this matter abandoned her. Although we sympathize with Harris's situation as she describes it, we affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 3, 2015 Harris filed a trip-and-fall personal injury complaint on the Judicial Council-approved form, alleging she had been injured on August 6, 2011, on or around 38th Street between Normandie and Denker Avenues in the City of Los Angeles, as a result of the negligently maintained, broken curb adjacent to her residence.

The City demurred to the complaint, arguing Harris had failed to timely comply with the requirements of the Government Claims Act (Gov. Code, § 900 et seq.).<sup>1</sup> The City attached as an exhibit to its demurrer a copy of the claim filed by Harris on September 5, 2013, more than six months after the accrual of her cause of action.<sup>2</sup> The unopposed demurrer was overruled on February 2, 2016 because the court determined there were no defects in the pleading and the City had failed to request judicial

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<sup>1</sup> Statutory references are to this code unless otherwise stated.

<sup>2</sup> Harris dated the claim form May 23, 2013. The received stamp of the City Clerk's Office indicates the form was filed September 5, 2013.

notice of any matter outside the pleading. The City was ordered to file a responsive pleading.

The City again demurred to the complaint on February 22, 2016 and requested the court take judicial notice of the claim filed by Harris on September 5, 2013 pursuant to Evidence Code section 452, subdivision (c). The court denied the request for judicial notice, explaining that the declaration of the city official purporting to authenticate Harris's claim for damages, apparently prepared for the purpose of this lawsuit, was not an official act of the City within the meaning of that provision. The demurrer was overruled on May 23, 2016, and the City was ordered to file an answer within 20 days.

The City answered the complaint on June 10, 2016. On February 14, 2017 the City moved for judgment on the pleadings, contending Harris's action was barred by the two-year statute of limitations in section 945.6, subdivision (a)(2). From the record on appeal it does not appear that Harris filed an opposition to the motion, but she attended the hearing and was permitted to present oral argument. The court granted the motion and subsequently entered judgment in favor of the City and against Harris.

## **DISCUSSION**

Harris was required to submit her personal injury claim to the City within six months of the date her claim accrued—that is, within six months of August 6, 2011, the date she fell. (See §§ 905 [requiring presentation of all claims for money or damages against local public entities with certain inapplicable exceptions], 911.2, subd. (a) [establishing six-month time limit].) In her opening brief Harris acknowledges she did not submit her claim to the Los Angeles City Clerk's office until May 23, 2013,

explaining the various difficulties she had with the lawyer she believed she had retained to represent her.<sup>3</sup>

The City is required to act on a claim within 45 days of its submission (§ 913, subd. (a)). Absent an extension of time agreed to by all parties, if the City fails or refuses to act on the claim within 45 days, it is deemed to have been rejected on the 45th day after filing. Pursuant to section 945.6, subdivision (a)(1), a lawsuit for personal injuries against the City must be commenced within six months after the date written notice of a denial was personally delivered or deposited in the mail, or, if written notice was not given, within two years from the accrual of the cause of action (§ 945.6, subd. (a)(2)).<sup>4</sup>

There is no indication in the record whether the City gave Harris written notice her claim had been rejected as untimely. If

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<sup>3</sup> It does not appear that Harris ever requested leave to file a late claim. The last day to do so was August 6, 2012, one year after her claim accrued (§ 911.4, subd. (b)).

<sup>4</sup> Section 945.6, subdivision (a), provides, with several exceptions not pertinent here, “[A]ny suit brought against a public entity on a cause of action for which a claim is required to be presented . . . must be commenced: [¶] (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. . . .”

In *Gonzales v. County of Los Angeles* (1988) 199 Cal.App.3d 601 this court interpreted the six-month period specified in section 945.6 to mean six calendar months *or* 182 days after the claims rejection notice is mailed, whichever is longer. (*Gonzales*, at pp. 604, 605.)

written notice had been given on the last possible date—the 45th day following May 23, 2013—under section 945.6, subdivision (a)(1), Harris’s lawsuit had to be filed by January 8, 2014.<sup>5</sup> If Harris did not receive written notice, her lawsuit had to be filed by August 6, 2013 under section 945.6, subdivision (a)(2), that is, two years after the date of her injury. Under either alternative Harris’s lawsuit filed June 3, 2015 was barred by the governing statute of limitations.

In her opening brief Harris describes in some detail the inadequate assistance provided by the lawyer she believed she had retained to pursue her personal injury claim against the City. However, her brief fails to identify any cognizable legal error in the trial court’s order granting the City’s motion for judgment on the pleadings on the ground her lawsuit was time-barred. (See, e.g., *Marzec v. Public Employees’ Retirement System* (2015) 236 Cal.App.4th 889, 902 [“as the parties challenging the trial court’s determination, it is plaintiffs’ burden ‘to affirmatively demonstrate error’”]; *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2007) 150 Cal.App.4th 953, 982 [same].)

In her reply brief Harris suggests that granting the motion deprived her of her constitutional right to trial by jury. A properly granted motion for judgment on the pleadings, as here, like a properly granted motion for summary judgment, is not an

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<sup>5</sup> Using the September 5, 2013 date indicated by the received stamp of the Los Angeles City Clerk’s Office as the date of submission, rather than May 23, 2013, as stated by Harris in her appellate brief, the lawsuit had to be filed no later than April 15, 2014 if she received written notice of the denial on the 45th day after submission.

impermissible infringement on the right to a jury trial. (See *Kurokawa v. Blum* (1988) 199 Cal.App.3d 976, 991.)

**DISPOSITION**

The judgment is affirmed. The City of Los Angeles is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

WILEY, J.\*

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