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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FARSHID GHAVASHIEH et al.,

Plaintiffs and Appellants,

v.

LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY,

Defendant and Respondent.

B276071

(Los Angeles County Super. Ct. No. BC540593)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Law Offices of Burg & Brock, Cameron Y. Brock, Craig D. Rackohn, for Plaintiffs and Appellants.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Corinne C. Bertsche, Dawn Flores-Oster, and Tera A. Lutz, for Defendant and Respondent.

INTRODUCTION

Farshid Ghavashieh and Sanaz Motazadian[1] (plaintiffs) brought an action for injuries sustained when the Los Angeles County Metropolitan Transit Authority (LACMTA, defendant) bus they were riding was involved in a traffic accident. The trial court granted defendant's summary judgment motion on the ground plaintiffs failed to initiate this action within six months after defendant served its written denial of their claim. (Gov. Code, § 945.6.)[2] We affirm.

PROCEDURAL BACKGROUND

The bus accident occurred October 23, 2012. Plaintiffs' attorney submitted the appropriate Government Claim Act forms, and LACMTA received them February 22, 2013. (§ 945.4.) On April 26, 2013, LACMTA employee Alberto Vazquez prepared and sent to plaintiffs' counsel, by certified mail, return receipt requested, a notice of rejection for each plaintiff's claim. LACMTA received the signed return receipts.

Plaintiffs initiated this action on March 26, 2014, but did not name LACMTA as a defendant. LACMTA was identified as

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[1] The record includes various spellings of plaintiffs' names. We use the spelling appearing in the third amended complaint.

[2] All undesignated statutory citations refer to the Government Code.

Under section 945.6, subdivision (a)(1), when a public entity rejects a claim for damages an action on the claim must be commenced "not later than six months after the date such notice is personally delivered or deposited in the mail." Under section 945.6, subdivision (a)(2), if the public entity does not give written notice, the action must be filed "within two years from the accrual of the cause of action."

Doe 1 on October 24, 2014. Plaintiffs' complaint was consolidated with those filed by other bus passengers.

Defendant demurred to plaintiffs' second amended complaint on the ground it was time-barred under section 945.6, subdivision (a)(1). The trial court sustained the demurrer without leave to amend, and plaintiffs challenged the dismissal of their action in a petition for writ of mandate.

This court granted extraordinary relief, holding defendant's demurrer to the second amended complaint should have been sustained with leave to amend "for the sole purpose of allowing plaintiffs to specifically plead why the statute [of] limitations is inapplicable." (*Gavasieh v. Superior Court* (Jan. 29, 2016, B266980) [nonpub. opn.] (see fn.1).) We added, the "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. . . . Obviously, [however,] 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." (*Ibid.*)

On remand, defendant moved for summary judgment,[3] arguing plaintiffs failed to commence this lawsuit within six months after defendant served the notices of claim rejection. Defendant supported the motion with the facts set forth above.

Plaintiffs opposed the motion, contending the question of "[w]hether or not [they] received notice of denial of their claims to

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[3] We granted plaintiffs' writ petition, permitting them to file the third amended complaint. Defendant filed its summary judgment motion before plaintiffs filed the operative pleading.

trigger the 180 day period to file their lawsuit [was one] of fact for the jury to determine." To demonstrate nonreceipt of the notices, plaintiffs' counsel submitted a declaration advising that all documents received in his office are scanned, but there were no scans for these two notices. Counsel did not recognize the signatures on the return receipts as belonging to any receptionist who worked at the firm during the applicable time period. Moreover, the signed receipts were undated and there was no printed name next to them. Counsel also stated he visited the United States Postal Service website and could not find any information under the tracking numbers associated with the return receipts.[4] Finally, plaintiffs asserted Vasquez's "proof of service [was] evidence that he placed the letters for collection, not that the letters were actually mailed."

The trial court concluded plaintiffs' evidence failed to raise a triable issue of material fact and granted summary judgment. We agree and affirm.

DISCUSSION

Our review of the summary judgment in defendant's favor is governed by well-established principles. We independently review the trial court's decision; defendant has the burden to demonstrate that plaintiffs cannot establish the elements of their causes of action; and we liberally construe plaintiff's evidence and resolve any evidentiary doubts in plaintiffs' favor. (See generally, *State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.) Summary judgment will be defeated "'based on

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[4] The trial court sustained defendant's evidentiary objection to this statement on the grounds it lacked foundation and was hearsay. See discussion *post*.

inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.' ([Code Civ. Proc.,] § 437c, subd. (c).)" (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1530, fn. 14.)

The time within which a lawsuit must be filed "against a public entity on a cause of action for which a claim is required to be presented" is six months if written notice of the rejection of the claim is given or, if written notice of rejection is not given, two years from the accrual of the cause of action. (§ 945.6, subds. (a)(1), (a)(2).) Section 915.2 provides that "proof of mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure."

Plaintiffs contend the mailing of the claim notices did not comply with Code of Civil Procedure section 1013a. Only "substantial" compliance is required. (*Him v. City and County of San Francisco* (2005) 133 Cal.App.4th 437, 444 (*Him*).) The proofs of services here are in substantial compliance with Code of Civil Procedure section 1013a.

Plaintiffs next contend they presented sufficient evidence of nonreceipt of the claim notices to create a triable issue of fact sufficient to defeat summary judgment. *Him* is instructive on this point. The evidence of nonreceipt in *Him* was similar to the evidence presented here. In *Him,* the secretary with the law firm representing the plaintiffs submitted a declaration stating she was responsible for all incoming mail and did not "receive or ever see" the claim rejection notices. (*Him, supra,* 133 Cal.App.4th at p. 444.) The plaintiffs' attorney attached a pre-lawsuit letter he sent to another attorney to whom he might refer the case, advising he had not yet received a notice of rejection. (*Id.* at pp.

444-445.) The Court of Appeal determined this evidence of nonreceipt was "legally insufficient to raise a triable issue of fact . . . [i]n view of the City's evidence of proof of mailing." (*Id.* at p. 446.) Finding plaintiffs' lawsuit untimely, judgment was in favor of the defendant. (*Id.* at p. 445.)

The deficiency in *Him* and in this case was the failure to address the critical issue, i.e., what plaintiffs did to determine whether they would be subject to a six-month or a two-year limitations period. As the *Him* court noted, the Legislature placed the risk of nondelivery on the claimant, not the public entity: "[F]ollowing a reasonable time after the expiration of the 45 days, a claimant should be aware that the claim has been denied and the statutory notice of that denial has not been provided. The claimant then has the opportunity to inquire about the denial and determine, thereby, the limitations period. [Citations.] The claimant should not be permitted to forgo that opportunity and, then, rely on the fact no notice was delivered to extend the limitations period." (*Him, supra,* 133 Cal.App.4th at p. 445.) Plaintiffs presented no evidence of any inquiry concerning the mailed notice of claim rejection. They did not raise a triable issue of fact that precluded summary judgment.[5]

Plaintiffs argue *Him* was wrongly decided and unfairly requires every claimant who has not *received* a written notice of rejection to file suit within six months. No; the six-month period applies only where a public entity has given written notice in accordance with the statutory requisites. If that has not

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[5] Because the lawsuit itself was untimely under section 945.6, subdivision (a)(1), we need not consider whether plaintiffs' subsequent Doe amendment, identifying LACMTA as Doe 1, related back to the date this lawsuit was initiated.

occurred, *Him* does not control, and the two-year statute of limitations applies.

Notwithstanding *Him*, plaintiffs contend the statement in our opinion granting writ relief that "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" is law of the case and sufficient to defeat summary judgment. The law-of-the-case doctrine applies to a principle or rule that is necessary for the appellate court's disposition. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893.) Our writ decision addressed whether plaintiffs should have been granted leave to amend to state facts sufficient to withstand a demurrer; we did not decide whether plaintiffs' allegations would constitute triable issues of fact. Accordingly, the law-of-the-case doctrine does not apply. (*Id.* at p. 892.)

Plaintiffs also argue we should apply the doctrine of equitable tolling. They raise this issue for the first time on appeal, however; consequently, it is forfeited. (*Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 872-873.)

We conclude with a brief discussion of the evidentiary objections and rulings. The parties made a total of four evidentiary objections. Plaintiffs' two objections were to Vasquez's statements that he mailed the notices on April 26, 2013. The legal basis for the objections was "Conclusion." The trial court overruled the objections. Defendant objected to two statements in the declaration submitted by plaintiffs' counsel. The trial court overruled the defense objection to plaintiffs' counsel's statement that he did not recognize the signature on the return receipts, but sustained the objection to the attorney's statement that he did not find any information concerning the

notices on the post office website using the return receipt tracking numbers on the grounds of lack of foundation and hearsay.

Citing *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 255, where the Court of Appeal held a blanket ruling sustaining 763 of 764 objections "was manifest error," plaintiffs argue the "[t]rial [c]ourt abused its discretion by making blanket rulings as to [plaintiffs'] objections and [failing to provide] specific legal reasoning as to [defendant's] evidentiary objections." We disagree. Two objections by one party are not enough to "blanket." Nor was the trial court required to provide explanations beyond "overruled" or "sustained." The trial court did not err in overruling the objections based on "conclusion." To the extent plaintiffs were offering the website search as evidence the notices were never mailed, the objection was properly sustained.

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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