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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**RAIMI SHOAGA,**

**Plaintiff and Appellant,**

**v.**

**STEVE KOCHLY et al.,**

**Defendants and Respondents.**

**A134755**

**(Contra Costa County  
Super. Ct. No. MSC11-00970)**

Plaintiff and appellant Raimi Shoaga (appellant), in propria persona, appeals from the trial court's order dismissing his lawsuit following the court's order sustaining, without leave to amend, a demurrer filed by defendant and respondent City of Richmond (City), and joined by the other named defendants (jointly, respondents).<sup>1</sup> Because appellant's claims are untimely, we affirm.

**BACKGROUND**

Appellant filed suit against respondents in April 2011. According to the complaint, appellant's causes of action are based on a June 2004 incident in which a City police officer caused a 40-foot container being used by appellant to be towed from the street. The officer allegedly failed to properly document the towing, which resulted in

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<sup>1</sup> The other named defendants are Steve Kochly, George Hills Company, Inc., and a City police officer identified only as Sergeant Murphy.

difficulty for appellant in locating the container, towing charges borne by appellant, and loss of a work contract.

In August 2011, the trial court sustained City's demurrer without leave to amend. The court reasoned appellant's complaint was untimely because his causes of action accrued by at least July 2004, when he presented a claim to City. Subsequently, the trial court entered judgment in favor of respondents.

#### DISCUSSION

Appellant's action is untimely under Government Code section 945.6.<sup>2</sup> Section 945.6, subdivision (a) provides in relevant part: "Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b), any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division 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. . . ." (See also *Roberts v. County of Los Angeles* (2009) 175 Cal.App.4th 474, 478-480; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.)

In July 2004, appellant filed an administrative claim with City arising out of the June 2004 towing. There is no indication that City notified appellant of denial of the claim; accordingly, respondents argue appellant had, under section 945.6, subdivision (a)(2), two years from July 2004 to file his complaint.

On appeal, appellant does not dispute that the claims in his complaint are the same as those involved in the administrative claim. Neither does he dispute that the two-year statute of limitations in section 945.6, subdivision (a)(2) applies to his claim. Instead, appellant contends respondents are equitably estopped from relying on the statute of limitations as a defense to his claims. In support of that argument, he alleges that

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<sup>2</sup> All undesignated section references are to the Government Code.

Kochly, who was handling his claim on behalf of City, “dissuaded” him from filing suit “by affirmative misrepresentation, and stonewalling.”

Even assuming appellant’s allegations about Kochly are sufficient to satisfy the elements of a claim of equitable estoppel, appellant’s claims are still barred by section 945.6, subdivision (a)(2). Appellant admits he “was fed up with [Kochly’s] tales” by the time he filed a small claims action, which was terminated in favor of City and Kochly in April 2008. He also states that Kochly’s “fraudulent tales” spanned the period between July 2004 and April 2008. Appellant has not alleged any conduct after April 2008 that “deliberately induced [him] to delay filing suit.” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 686.) Accordingly, based on appellant’s own allegations, the doctrine of equitable estoppel did not provide a basis for tolling of the statute of limitations after, at least, April 2008. Thus, his action had to be filed by, at the latest, April 2010. Appellant cites no case authority to the contrary.<sup>3</sup>

The trial court properly sustained respondents’ demurrer without leave to amend because appellant’s action is untimely. In light of that conclusion, we need not consider whether it was also proper to sustain the demurrer under the res judicata doctrine, due to the small claims action brought by appellant.

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<sup>3</sup> Appellant asserted in his complaint that the three-year statute of limitations in Code of Civil Procedure section 338, subdivision (d) for an “Action for relief on the ground of fraud or mistake” was applicable to his lawsuit, and there is a single cite to that section in his brief on appeal. However, he fails to cite any authority or reasoned argument why that section, rather than section 945.6, applies to the claims in this case, especially because there are no allegations of fraud or mistake after April 2008. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

DISPOSITION

The trial court's judgment is affirmed. Costs on appeal are awarded to respondents.

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SIMONS, Acting P.J.

We concur.

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NEEDHAM, J.

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BRUINIERS, J.