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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Siskiyou)

JAMES J. JOHNSON,

Plaintiff and Appellant,

v.

THOMAS GUARINO et al.,

Defendants and Respondents.

C068279

(Super. Ct.
No. SCCVCV1000902)

After many years of providing legal representation for indigent criminal defendants in cases in which the public defender declared a conflict, appellant James J. Johnson received no new appointments after responsibility for awarding contracts to conflict counsel was changed from the superior court to the county counsel. Johnson filed suit against Thomas Guarino, Siskiyou County Counsel, and the Siskiyou County Board of Supervisors (Board) based on the allegations that they colluded against him in order to shift conflict representation to a law firm based outside the County of Siskiyou (the County). Guarino and the Board demurred on grounds that included Johnson's failure to comply with the California Tort Claims Act

(Government Code, § 900 et seq.).¹ The trial court dismissed the case after sustaining without leave to amend the demurrers filed by Guarino and the Board.

On appeal, Johnson contends the trial court erred in sustaining the demurrers because he stated valid causes of action for intentional interference with a prospective economic advantage and fraud. We conclude that Johnson has not submitted an appellate record sufficient to show that he complied with the presentment requirement of the Tort Claims Act before bringing this action in superior court. Accordingly, we affirm the judgment of dismissal.

FACTUAL AND PROCEDURAL HISTORY

In June 2010, Johnson filed a complaint in superior court against Guarino and the Board that sought damages for interference with his contracts awarded by the superior court for indigent criminal legal defense. Johnson alleged that collusion between Guarino and the Board led to the removal of contracting for conflict representation from the purview of the superior court with the result that Johnson was deliberately excluded from providing further legal services to the County. The Board demurred² on grounds that included the assertion Johnson had failed to properly present his claims under the Tort Claims Act. The trial court sustained the demurrer but “very reluctantly” granted leave to amend. In sustaining the

¹ Undesignated statutory references are to the Government Code.

² Guarino had not been served with the summons and complaint.

demurrer, the trial court took judicial notice of documents submitted by the Board, including the claim presented by Johnson to the County in May 2010.

Johnson filed a first amended complaint, and defendants responded by demurrer. The demurrer included noncompliance with the Tort Claims Act as a basis for dismissal of the case. The trial court sustained without leave to amend the demurrer to the first cause of action against the Board. The court also sustained the demurrer as to the second cause of action for intentional misrepresentation against Guarino, but with leave to amend.

Johnson filed a second amended complaint against Guarino, and Guarino demurred. The trial court sustained the demurrer without leave to amend on grounds "[t]hat it is barred by the failure of plaintiff James J. Johnson to present a claim for the matters alleged in the Complaint against the defendant Thomas Guarino and therefore said plaintiff has failed to comply with the claims presentment requirements of the California Tort Liability Act (. . . §§ 905, 910, 911.2, 945.4, 950.2 and 950.6), sufficient to support his Complaint herein against said defendant" and that "it fails to state facts sufficient to constitute a cause of action against defendant Thomas Guarino."

DISCUSSION

California Tort Claims Act

Johnson appears to argue that he properly presented his claim to the County in compliance with the California Tort Claims Act. We reject the argument because Johnson has not

provided an adequate record to support any argument that his claim complied with the Tort Claims Act before he brought the action in the superior court.

A.

The Presentment Requirement

Sections 905 and 945.4 "require, as a condition precedent to bringing suit for 'money or damages' against a local public entity, the timely presentation to the defendant of a written claim and the rejection of that claim in whole or in part." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1078 (*Loehr*), italics omitted.) "Although a claim need not conform to pleading standards, the facts constituting the causes of action pleaded in the complaint must substantially correspond with the circumstances described in the claims as the basis of the plaintiff's injury. (*Connelly v. State of California* (1970) 3 Cal.App.3d 744, 748.) Where there has been an attempt to comply but the compliance is defective, the test of substantial compliance controls. Under this test, the court must ask whether sufficient information is disclosed on the face of the filed claim 'to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit.' (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456.) [¶] The doctrine of substantial compliance, however, cannot cure total omission of an essential element from the claim or remedy a plaintiff's failure to comply meaningfully with the statute. (*Hall v. City of Los Angeles* (1941) 19 Cal.2d 198; *Tyus v. City*

of Los Angeles (1977) 74 Cal.App.3d 667; *Shelton v. Superior Court* (1976) 56 Cal.App.3d 66.)” (*Loehr, supra*, at pp. 1082-1083.)

Here, Guarino argued to the trial court that, “while [Johnson] pleads compliance [with the Tort Claims Act], as the claim attached to the Declaration of Nichole Thomas (Exhibit A) as to which this court has taken judicial notice, shows, the claim of James J. Johnson is not for fraud. It is about action of the [Board] that usurped the [superior] court’s authority and intentionally interfered with [that] court’s appointments [to the conflict panel]. Also, it adds non-compliance with [the] competitive bidding process and intrusion by the legislative branch into the judicial branch. There is nothing about any representations by Thomas Guarino or anyone else. There is nothing about fraud.”

B.

Appellant’s Burden to Demonstrate Error

The trial court sustained the demurrer to the original complaint, noting it was unlikely Johnson could amend to satisfy compliance with the Tort Claims Act. The demurrer to the second amended complaint was based in part on Johnson’s failure to comply with the Tort Claims Act. Consequently, Johnson can secure reversal of the judgment only if he can demonstrate that the trial court erred in concluding he did not satisfy the presentment requirement of section 905.

Based on the appellate record provided, Johnson cannot establish error. The record does not contain the documents

judicially noticed by the trial court in sustaining the demurrers. We do not have Johnson's claim to the County in May 2010, nor the County's subsequent rejection of the claim. Thus, we cannot assess whether, under the substantial compliance test, the claim fairly presented the issues upon which Johnson later premised his causes of action in the superior court. (See *Loehr, supra*, 147 Cal.App.3d at pp. 1082-1083.)

An appellant "bears the burden to provide a record on appeal which affirmatively shows that there was an error below, and any uncertainty in the record must be resolved against the [appellant]." (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549; accord *People v. \$17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084.) Here, Johnson has not met that burden and the omission precludes us from assessing the merits of his claim.

Johnson asserts that he should be excused from the presentment requirement on the basis of sections 910.6, subdivision (b),³ 910.8,⁴ and 911.⁵ Noting that the trial court

³ Subdivision (b) of section 910.6 provides: "A failure or refusal to amend a claim, whether or not notice of insufficiency is given under Section 910.8, shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Sections 910 and 910.2 or a form provided under Section 910.4."

⁴ Section 910.8 provides: "If, in the opinion of the board or the person designated by it, a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or the person may, at any time within 20 days after the

rejected this argument, he "request[s] this Court to decide otherwise because as can be clearly seen they do in fact apply and serve as a waiver of the supposed bar." In support, Johnson offers no analysis to explain how the cited statutory provisions excused noncompliance with the presentment requirement. "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.)" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

Moreover, on this record, none of the cited Government Code sections aids Johnson. Sections 910.6, 910.8, and 911 govern the stage at which the government entity that has been presented with the claim under the Tort Claims Act deems the claim to be deficient. Here, the gist of the defendants' arguments in the trial court was that Johnson's claim to the County did not present the same issues as those he later presented in his

claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. The notice shall be given in the manner prescribed by Section 915.4. The board may not take action on the claim for a period of 15 days after the notice is given."

⁵ Section 911 provides: "Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant."

superior court action. The absence of his claim to the County from the appellate record requires us to presume that the trial court correctly concluded that the claim differed from Johnson's complaint so that the Tort Claims Act barred suit.

DISPOSITION

The judgment is affirmed. Respondents Thomas Guarino and the Siskiyou County Board of Supervisors shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

_____ HOCH _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ ROBIE _____, J.