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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

KAREN MOU,

Plaintiff and Appellant,

v.

SANTA CLARA COUNTY LAW  
LIBRARY et al.,

Defendants and Respondents.

H039892

(Santa Clara County  
Super. Ct. No. CV226909)

Appellant Karen Mou brought an action for civil rights violations (Civ. Code, § 52 et seq.) and defamation against respondents Santa Clara County Law Library (SCCLL), Karen Bailey, Kristin Remmers, Roger Hyunh, Wei-Yau Huang, Mary Thai, Tom Hewitt, and Steven Hallgrimson.<sup>1</sup> She appeals from the judgment of dismissal entered after the trial court sustained respondents' demurrer to her second amended complaint. We reverse.

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<sup>1</sup> The individually named respondents are SCCLL employees or members of its board of directors.

## **I. The Second Amended Complaint**

The second amended complaint alleged the following facts.<sup>2</sup> On August 19 and 20, 2010, appellant visited the SCCLL where the staff were rude, refused to serve her, and treated her differently from other patrons. Huang yelled at her. Remmers always gave her “dirty looks.” Appellant, “an Asian woman who speaks English as second language, was suspended due to using word fat” about Remmers while male attorneys were not suspended for making similar remarks.

In June 2011, appellant returned to the SCCLL after her first suspension from the SCCLL. There were posted signs stating that talking on a cell phone was prohibited. Appellant asked Remmers to ask an attorney, who was talking on his cell phone, to either lower his voice or take the cell phone outside. Remmers refused and said that “she would not suspend a white attorney and said that she only suspended Asian women.” Remmers also told appellant that her “English was not good enough to complain about her.” Appellant was again suspended from the SCCLL.

On June 24, 2011, appellant went to the SCCLL and was told by four police officers to leave. She was also told that if she returned, she would be arrested for violating Penal Code section 602.

On July 9, 2011, appellant informed a lieutenant of the San Jose Police Department that she needed to do legal research. She and her ex-husband Yang went to the SCCLL where she ““QUIETLY”” researched on Westlaw while Yang went into a room with Huang. Five minutes later, Yang told appellant that Huang demanded that she leave the SCCLL. After appellant left, three police officers arrived and told her that Huang had reported that she was yelling, “which was absolutely a BIG lie.”

All respondents “intentionally, maliciously, and willfully violated her civil rights . . . .” As a result of respondents’ conduct, appellant suffered damages.

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<sup>2</sup> These facts are essentially the same in all three complaints.

The second cause of action for defamation alleged the following. Respondents “committed libel, libel per se, slander, slander per se by publishing and/or orally accusing [her], including but not limited to, yelling [in] library to SJ police.” Respondents knew that appellant never yelled, but used the word to defame her. Respondents knew “the report against [appellant] was false and would be published and transmitted to the public, and that the intended audience of this false and untruthful statement would be the police report.” As a result of respondents’ conduct, appellant suffered damages.

Appellant “fully complied with the requirements of the Government Claims Act by timely filing a claim for damages on or about December 22, 2011. . . . This claim was ignored” by the SCCLL. Appellant also filed a “claim on May 17, 2011 in response to [respondents’] unlawful discrimination and treatment against her on or about November 20, 2010 . . . .” “After [appellant] filed tort claim forms, [respondents] never claimed any defect.”

## **II. Statement of the Case**

In June 2012, appellant filed a complaint alleging causes of action for civil rights violations, defamation, and retaliation. She also alleged that she had timely complied with the Government Claims Act (Claims Act) on December 22, 2011, and attached a copy of her claim. Respondents filed a demurrer to the retaliation cause of action on the ground that appellant was a patron, not an employee, of the SCCLL and thus could not state a cause of action for retaliation. The trial court sustained the demurrer with leave to amend as to the retaliation cause of action. The trial court also granted respondents’ motion to strike the portions of the prayer seeking attorney’s fees and injunctive relief as well as some of the requested damages.

In November 2012, appellant filed a first amended complaint alleging causes of action for civil rights violations, defamation, and retaliation. She also alleged that she had timely complied with the Claims Act on December 22, 2011, but did not attach a

copy of her claim. Respondents filed a demurrer to the first cause of action on the ground that appellant failed to present a timely claim under the Claims Act after the cause of action accrued. They also demurred to the retaliation cause of action. The trial court took judicial notice of, among other things, the complaint. It then sustained the demurrer with leave to amend as to the cause of action for civil rights violations on the ground that her December 22, 2011 claim was filed more than a year after her cause of action accrued in August 2010. The trial court sustained the demurrer without leave to amend as to the cause of action for retaliation.

In February 2013, appellant filed a second amended complaint alleging causes of action for civil rights violations and defamation. Respondents filed a demurrer to the first cause of action on the ground that appellant failed to exhaust her administrative remedies in a timely fashion under Government Code section 911.2.<sup>3</sup> Respondents also demurred to the second cause of action on the ground that she failed to state a cause of action because the allegedly defamatory statements were privileged. (Code Civ. Proc., § 430.10, subd. (e).)

Following a hearing, the trial court granted respondents' request for judicial notice of the complaint and the first amended complaint. The trial court sustained respondents' demurrer to the first cause of action for civil rights violations without leave to amend. The trial court stated: "Having reviewed the prior pleadings and the [second amended complaint] the Court determines that [appellant's] claim for violation of Civ. Code § 52 is and always has been based on one continuous course of alleged conduct that began in August 2010 and became barred by [appellant's] failure to exhaust her administrative remedies by presenting the claim within six months of the claim's accrual in August 2010." The trial court also sustained the demurrer to the defamation cause of

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<sup>3</sup> All further statutory references are to the Government Code unless stated otherwise.

action on the ground that the defamatory statements about appellant were made to officers of the San Jose Police Department, which were privileged under Civil Code section 47, subdivision (b). The trial court denied leave to amend this cause of action because “the defect [could not] be cured by amendment without contradicting prior factual allegations.”

### **III. Discussion**

#### **A. Standard of Review**

“When reviewing a judgment dismissing a complaint after the granting of a demurrer without leave to amend, courts must assume the truth of the complaint’s properly pleaded or implied factual allegations. [Citation.] Courts must also consider judicially noticed matters. [Citation.] In addition, we give the complaint a reasonable interpretation, and read it in context. [Citation.] If the trial court has sustained the demurer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

#### **B. Civil Rights Violations Cause of Action**

At this court’s request, the parties briefed the issue of whether respondents waived the issue that appellant’s claim to the SCCLL was untimely under the Claims Act. Respondents contend that appellant failed to allege facts sufficient to demonstrate that her

claim was timely. They also contend that she never mentioned whether the SCCLL gave her notice that the claim she presented was untimely.

Under the Claims Act, a plaintiff must present a written claim to a public entity prior to maintaining an action for money or damages against a public entity or public employee. (§ 945.4.) Claims for intentional torts, including violation of civil rights, discrimination, harassment and defamation, constitute claims “relating to a cause of action for death or for injury to person” and must be presented “not later than six months after the accrual of the cause of action.” (§ 911.2, subd. (a).)

If a claim is presented late and the claimant has not made an application to present a late claim under section 911.4, “the board or other person designated by it may, at any time within 45 days after the claim is presented, give written notice to the person presenting the claim that the claim was not filed timely and that it is being returned without further action.” (§ 911.3, subd. (a).) Section 911.3, subdivision (a) specifies the information that must be presented in the notice from the public entity to the claimant.<sup>4</sup> The purpose of this notice is “to assure that the claimant distinguishes between a claim rejected on its merits and one returned as untimely. Thus, the claimant is informed as to which procedure to pursue. [Citation.]” (*Dixon v. City of Turlock* (1990) 219 Cal.App.3d 907, 911.) If the public entity fails to give the notice set forth in section

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<sup>4</sup> Section 911.3, subdivision (a) provides in relevant part: “The notice shall be in substantially the following form: [¶] ‘The claim you presented to the (insert title of board or officer) on (indicate date) is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim. [¶] Your only recourse at this time is to apply without delay to (name of public entity) for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code. [¶] You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.’”

911.3 within 45 days after the claim is presented, it waives “[a]ny defense as to the time limit for presenting a claim” unless the claimant has failed to provide his or her address. (§ 911.3, subd. (b).)<sup>5</sup>

Respondents argue that appellant’s “pleadings made no mention of whether the [SCCLL] gave her notice that the claim she presented was timely.” We disagree. The second amended complaint stated that appellant complied with the Claims Act by filing a claim, which the SCCLL “ignored.” “Ignore” is defined as “to refuse to take notice of.” (Merriam-Webster’s New Collegiate Dict. (10th ed. 1993) pp. 576-577.) Moreover, the second amended complaint stated: “After [appellant] filed tort claim forms, [respondents] never claimed any defect.” These statements can only be interpreted as establishing that the SCCLL failed to provide any notice, let alone notice which complied with the requirements of section 911.3, subdivision (a), regarding the untimeliness of appellant’s claim. Since section 911.3, subdivision (b) unequivocally states that the public entity’s failure to comply with the notice requirement results in a waiver of any defense based on the claim’s timeliness, the trial court erred in sustaining the demurrer as to the cause of action for civil rights violations.

### **C. Defamation Cause of Action**

Appellant next contends that the trial court abused its discretion when it sustained the demurrer without leave to amend as to the second cause of action for defamation.

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<sup>5</sup> Section 911.3, subdivision (b) provides: “Any defense as to the time limit for presenting a claim described in subdivision (a) is waived by failure to give the notice set forth in subdivision (a) within 45 days after the claim is presented, 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.” Here, appellant provided her address on her claim to the SCCLL, and thus the present case did not fall within the exception to the notice requirement.

The complaint alleged that the basis of her defamation cause of action was each individual respondents' "publishing and/or orally accusing [her], including but not limited to, yelling [in] library to [San Jose] police." The allegations were repeated in the first amended complaint and the second amended complaint. These statements are privileged under Civil Code section 47, subdivision (b) and barred any defamation action based on them. (See *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350.)

At the hearing on the demurrer to the second amended complaint, appellant stated: "I just heard from a couple of witnesses that they told me about the defamatory statement from the law library staff, and it's not from the police. So they are the third party; so, therefore, plaintiff here requests to amend defamatory defamation cause of action so I can add the allegation."<sup>6</sup>

Respondents contend that even if the trial court had granted appellant leave to amend the second amended complaint, appellant's failure to allege any facts regarding defamation in either the December 22, 2011 or the May 17, 2011 claim barred her defamation cause of action.

Section 910 sets forth the information that must be provided in a claim under the Claims Act. In brief, the claim must include the date, place, and other circumstances of the occurrence that gave rise to the claim. (§ 910.)<sup>7</sup> The purpose of this requirement is to

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<sup>6</sup> Appellant did not specify the nature of the statements made by third parties and has not done so on appeal.

<sup>7</sup> Section 910 states: "A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following: [¶] (a) The name and post office address of the claimant. [¶] (b) The post office address to which the person presenting the claim desires notices to be sent. [¶] (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. [¶] (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim. [¶] (e) The name or names of the public employee or employees causing the injury, damage, or loss, if known. [¶] (f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any

(Continued)

“provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.” (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455, superseded by statute on other grounds.)

In the present case, appellant’s claims informed the SCCLL that the staff had refused to serve her or listen to her complaints, and had “illegally suspended” her from the SCCLL. Staff had also harassed her and “threatened her First Amendment, equal protection and due process” rights. After her initial period of suspension, staff refused again to serve her. When she complained, she was immediately “suspended without due process.” The December 2011 claim stated that Hallgrimson also threatened to have her arrested. The May 2011 claim referred to the staff’s refusal to provide “tax form 990” and public information, including information about board meetings. In both claims, appellant asserted: “Claimant’s injuries are civil rights violation, Constitutional rights violation, stress, high blood pressure, emotional distress, shame, defamation, inconvenience, transportation fees to use other law library, amount of bill of cost from Judge Fogel order. [¶] . . . [¶] . . . The claim is based on conspiracy civil rights violations, civil rights violation, medical expense, emotional distress, inconvenience, defamation, harassments, threats, public information act, Brown act, Sunshine ordinances violations, punitive damage . . . .” Thus, appellant directly and indirectly referred to statements made to her in both claims, but she never mentioned any statement made by SCCLL employees to others. These facts were insufficient to alert the SCCLL that it should investigate its potential for liability related to defamatory statements that its

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prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.”

employees made about appellant to others. Accordingly, the demurrer to the defamation cause of action was properly sustained without leave to amend.

#### **D. Sanctions**

Appellant also requests that this court “sanction respondents’ attorney or report [her] to California Bar Association for suspected ethics violation for discipline.” She claims counsel “bragged about she had a license to lie,” misled the court, and failed “to cite and/or address adverse authorities.” Respondents’ counsel disputed appellant’s claims. However, the trial court expressly stated that it did not consider this extrinsic evidence when ruling on the demurrer. Given that the trial court did not err in failing to consider these declarations, we reject appellant’s request.

#### **IV. Disposition**

The judgment is reversed. The parties shall bear their own costs on appeal.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.