Court of Appeal Case No. H050498

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

TATIANA SHEVERTALOVA,
Plaintiff and Appellant,

v.

CITY OF SARATOGA,
Defendant and Respondent.

Appeal from County of Santa Clara Superior Court
Case No. 19CV348222
Hon. Peter H. Kirwan

AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT

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Pursuant to California Rules of Court, Rule 8.200(c), the League of California Cities ("Cal Cities") and the California State Association of Counties ("CSAC") (collectively "*Amici*") submit this *amicus curiae* brief in support of defendant and respondent City of Saratoga (the "City").

I.

IDENTITY OF *AMICUS CURIAE* AND STATEMENT OF INTEREST

Cal Cities is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this is a matter affecting all counties.

II.

POINTS TO BE ARGUED BY *AMICI*

The Court should find that the delayed discovery rule does not operate to save Plaintiff's untimely claim for damages. Additionally, the Court should decline to read the notice-waiver provision of Government Code Section 911.3(b) to revive claims for damages presented beyond the one-year outside limit where relief under the late claim application process might be available.

III.

STATEMENT OF FACTS

Amici adopts the statement of facts in the Respondent's Brief.

IV.

ARGUMENT

Among the questions before this Court are (a) how broadly to interpret a claim of delayed discovery under the Government Claims Act; and (b) whether a claim for damages presented beyond the one-year outside limit can be revived, under the circumstances presented by this case. To answer these questions, it is important to understand, in the first instance, the purposes of the Government Claims Act, and how it has developed.

1. Historical Background of the Government Claims Act

Even prior to the passage of the Government Claims Act, by the middle of the last century, the Court of Appeal had noted that "[t]he old maxim that the King can do no wrong-immunity of the sovereign for the torts of its officers and employees when

acting in a governmental capacity—an unjust relic of the dark ages, is rapidly passing into oblivion." *Osborn v. City of Whittier* (1951) 103 Cal. App. 2d 609, 614 n.2.

By the early 1960's, the common law doctrine of sovereign immunity in California had "become . . . riddled with exceptions and inconsistencies." *Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 582. In 1961, the Supreme Court essentially abolished common law sovereign immunity through two opinions. See *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211; *Lipman v. Brisbane Elementary Sch. Dist.* (1961) 55 Cal.2d 224. The basic rule of *Muskopf* and *Lipman* was that government officials could be held liable for their negligent performance of ministerial duties, but were entitled to immunity for discretionary decisions. See *Muskopf*, 55 Cal.2d at 220; *Lipman*, 55 Cal.2d at 229.

In response to *Muskopf* and *Lipman*, the Legislature enacted a moratorium suspending the effect of those two cases, and appointed a Law Revision Commission which studied "problems relating to sovereign immunity and recommended legislation which was substantially enacted as the California [Government] Claims Act." *Elson*, 51 Cal.App.3d at 585.

The Government Claims Act, Government Code Section 810 *et seq.*, enacted in 1963, is a "thoughtfully devised statutory plan that is designed to control the basis under which public entities may be liable for damages." *Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 29. The Act is comprised of a comprehensive format specifying the parameters of

governmental liability, including . . . a detailed procedure for the advance filing of a claim as a prerequisite to filing suit . . .” and deadlines for “both the filing of claims and the commencement of litigation . . .” *Id* at 28, fn. omitted.

“[T]he intent of the [A]ct is to confine potential governmental liability to rigidly delineated circumstances. The claimant bears the burden of ensuring that the claim is presented to the appropriate public entity.” *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991 (citations). The Act also “provides an opportunity to the public entity to quickly rectify a dangerous condition and . . . to take the potential claim into account in its fiscal planning.” *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 696-697.

2. The Delayed Discovery Rule Does Not Apply

In this case, a reasonably diligent investigation by the Plaintiff would have yielded the information necessary to file a timely claim for damages, as further set forth in the City’s brief. That conclusion is consistent with over 50 years of case law finding a lack of excusable justification for a late claim in situations where the claimant (a) was aware of the incident they alleged caused them damage; and (b) could have discovered the identity of the responsible public entity in a timely manner:

A. Claimant failed to obtain a copy of the police report which revealed the possible claim against public entity for over eight months following accident (*Black v. County of Los Angeles* (1970) 12 Cal.App.3d 670);

B. Police report from vehicle collision said the roadway was flooded because of work done by the entity's employees in the area, but claimant failed to investigate potential liability of public entity or make contact with the public entity during the claim presentation period (*Department of Water & Power v. Superior Court (Dzhibinyan)* (2000) 82 Cal.App.4th 1288, 1295);

C. State emblem on car that struck plaintiff contradicted contention that claimant was unaware that the car was owned by the state, and attorney failed to (a) ask the reporting law enforcement agency for the identity of the public entity employer of the other car's driver; or (b) investigate other leads provided in the report (*Shaddox v. Melcher* (1969) 270 Cal.App.2d 598, 600);

D. Police report clearly reflected that accident occurred on State Route 1, and state ownership and control of highway was established by statute, attorney relied on county's assertion to attorney's secretary that the road was owned by the county, but failed to investigate further (*Greene v. State of California* (1990) 222 Cal.App.3d 117, 122);

E. Claimant's attorney failed to take "any affirmative action" to ascertain whether hospital was a public entity (*Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1163 (overruled on another ground in *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1607-1608)); and

F. Claimant's "attorney apparently conducted no investigation, such as simple inquiry to the hospital, to determine whether the doctors might have been county employees" (*Leake v. Wu* (1976) 64 Cal.App.3d 668, 673).

Here, Plaintiff's Fourth Amended Complaint does not allege facts that show how she (a) conducted a reasonably diligent investigation into the entities involved in the Highway 9 Project; and (b) failed to timely discover the City of Saratoga's involvement, which was a matter of public record. The Court should conclude the delayed discovery rule does not apply in this case.

3. The Notice-Waiver Provision of Government Code Section 911.3(b) Should not be Read to Revive Time-Barred Claims and Relieve a Claimant from Presenting a Claim within One Year

The Court should conclude that the notice-waiver provision in Government Code[1] Section 911.3(b) does not apply to the facts of this case. Plaintiff's proposed expansion of the notice-waiver provision of Section 911.3(b) (a) requires an idle act, where public entities lack jurisdiction to grant a late claim application submitted beyond the one-year outside limit; and (b) could "revive" claims against public entities that are years old. "An unlimited claim presentation period expanding the rights of plaintiffs against government entities would frustrate the intent and purposes of the Government Claims Act." *City of Pasadena*

[1] Unless otherwise indicated, all references are to the Government Code.

v. Superior Court (Jauregui) (2017) 12 Cal.App.5th 1340, 1351 (finding plaintiff's claim for damages untimely when presented 16 months after diagnosis of mesothelioma).

The notice and defense waiver statutes in the Government Claims Act, including Section 911.3(b), induce public entities to "investigate claims promptly, and to make and notify claimants of their determinations, thus enabling claimants to perfect their claims." *Wurts v. County. of Fresno* (1996) 44 Cal. App. 4th 380, 387 (citation). As such, it is logical that if a claimant cannot perfect a claim – because it is beyond the one-year outside limit for relief from an application for leave to present a late claim – then Section 911.3(b) cannot be read so broadly as to force a public entity's waiver of the untimeliness defense in litigation.

A. Statutory Background of Relevant Limitation Period and Late Claim Application Process

Section 911.2(a)[2] imposes a six-month limitation period to present certain claims, including personal injury claims such as the Plaintiff's. For all other claims, the limitation period is one year from the accrual of the cause of action.

[2] Government Code Section 911.2(a) provides as follows: "A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action."

Section 911.4[3] provides a late claim application process for claims subject to the six-month limitation period – but subdivision (b) states that the limitation period for such applications is one year from the accrual of the cause of action. With exceptions not applicable here, "'the public entity is 'powerless to grant relief' if an application for leave to file a late claim was presented after the one-year deadline." *Coble v. Ventura County Health Agency* (2021) 73 Cal.App.5th 417, 421 (quoting *Horn v. Chico Unified School Dist.* (1967) 254 Cal.App.2d 335, 339).

Reading Section 911.2(a) and Section 911.4 together, if a claim were presented more than one year after the accrual of the cause of action, there is no application process a claimant can go through to perfect their claim – the public entity is "powerless" to revive such an untimely claim.

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[3] Government Code Section 911.4, subdivisions (a) and (b) provide as follows:

> (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.
> (b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

B. Statutory Background of Notice-Waiver Provision for Untimely Claims for Damages

Section 911.3(a) provides that when a public entity receives an untimely claim, the entity has 45 days to provide written notice to the claimant that the claim was untimely. The statute also provides text for a form letter that provides for instructions on how to apply for leave to present a late claim – which implies that the notification and the specific text of the form letter is only needed if a claim were presented within one year of accrual of the cause of action – due to the one-year limitation on presenting claims for damages set forth by Section 911.2(a).

Section 911.3(b) provides that for a "claim described in subdivision (a)" (a late claim subject to the application process under Section 911.4), if a public entity chooses not to notify a claimant of the late claim application process, the public entity waives "[a]ny defense as to the time limit for presenting a claim described in subdivision (a)." The waiver of Section 911.3(b) must be given effect – but such waiver should not be imposed without limitation.

Section 911.3, passed in 1982, has been described as follows:

> Section 911.3 sets forth the notice procedure the public entity must follow when it determines that a claim has not been timely filed. Prior to the Legislature's adoption of section 911.3, the public entity was not required to specify the reason for rejection when the claim was returned as untimely. In those cases, the claimant was misled as to the available remedy when the public entity returned the

> claim as "rejected" when in fact it was returned as untimely.
>
> The purpose of the section 911.3 notice is to assure that the claimant distinguishes between a claim rejected on its merits and one returned as untimely. The claimant thus knows which procedure to pursue.

Rason v. Santa Barbara City Housing Authority (1988), 201 Cal. App. 3d 817, 830 (citations). In other words, public entities that do not provide the form letter/late claim application information in subdivision (a) waive the defense that claimants failed to apply for a late claim. However, the text of Section 911.3 also demonstrates an intention that claimants – who are within the one-year outside limit to go through late claim application process – are made aware of the late claim application process. The late claim application process is simply not available to claimants, such as Plaintiff, who seek to present a claim beyond the one-year outside limit.

C. The Court Should Decline to Impose the Waiver of Section 911.3(b) if a Claim for Damages is Presented beyond the One-Year Outside Limit

The Court can give meaning to the one-year limitation on late claim applications under Section 911.4(b), without requiring an idle act – by imposing the waiver of Section 911.3(b) only during the time frame where a late claim application could be accepted, which is up to the one-year outside limit from accrual of the cause of action.

The alternative interpretation, urged by Plaintiff, would result in a notice under Section 911.3(a) being required for claims

presented beyond the one-year outside limit. Even after a public entity were to give such notice, the public entity could not grant a late claim application pursuant to Section 911.4(b), which requires applications to be submitted "not to exceed one year after the accrual of the cause of action." Such notice, if required for claims beyond the one-year outside limit, would mislead claimants into believing they could obtain relief through the late claim application process – they cannot.

Plaintiff's claim accrued August 2018, more than one year prior to her March 2020 claim for damages. Under Plaintiff's interpretation, in this case, she would go through the late claim application process, but the City would be "powerless" to approve her application. *See Coble*, 73 Cal.App.5th at 421. Plaintiff would also have no remedy in the courts, who cannot grant a petition for relief from a public entity's denial of a late claim application, when the application is presented beyond the one-year outside limit. *See* Government Code Section 946.6(c). For claims beyond the one-year outside limit, the notice to a claimant of the opportunity to go through the late claim application process, and a claimant going through that process, are idle acts which the Court should not require. *See*, e.g., Civil Code Section 3532 ("The law neither does nor requires idle acts.").

Where "[t]he purpose of a statute is plain," a court can adopt "a statutory construction recognizing an implicit . . . exception" in particular circumstances." *Lewis v. Superior Court* (1985) 175 Cal.App.3d 366, 372, 376 (citations). Section 911.3(b) states that the notice-waiver provisions apply to claims that

could be processed through the late claim application process, providing the waiver only applies to claims "described in subdivision (a)."

The Court should decline to read the notice-waiver provision of Section 911.3(b) so broadly as to actually revive untimely claims beyond the one-year outside limit for the late claim application process of Section 911.4, where such process – jurisdictionally – cannot result in a claimant perfecting such a late claim. Claims beyond that one-year outside limit are simply time-barred, and cannot be revived by a late claim application. Public entities should not be forced to provide notice of the late claim application process, and claimants should not be forced to go through that process, for public entities to avoid the doctrine of waiver for claims beyond the one-year outside limit.

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V. CONCLUSION

For the foregoing reasons, *Amici* request the Court to affirm the trial court's order sustaining the City's Demurrer to the Fourth Amended Complaint, without leave to amend.

Dated: October 4, 2023

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed *amicus curiae* brief is produced using 13-point Century Schoolbook type including footnotes and contains approximately 2,806 words, which is less than the 14,000 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: October 4, 2023

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PROOF OF SERVICE

I do hereby declare and state that I am employed in the County of Los Angeles, I am over the age of eighteen years and not a party to the within entitled action. My business address is 100 North Garfield Avenue, Room N-210, Pasadena, California 91101.

On October 4, 2023, I served the foregoing documents described as:

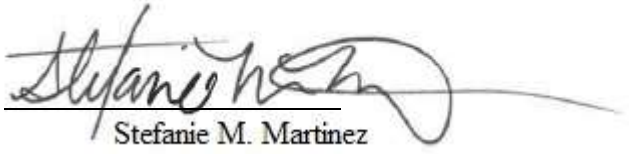
***AMICUS CURIAE* BRIEF OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF RESPONDENT**

on the interested parties in the manner prescribed as follows:

[X] BY ELECTRONIC TRANMISTION VIA TRUEFILING: I caused a copy of the foregoing documents to be sent via TrueFiling to the persons, parties and/or counsel of record designated for electronic service in this matter on the TrueFiling website. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] BY MAIL: I am "readily familiar" with the City's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 2023, at Pasadena, California.



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