Tentative Ruling

692794 DeLaFuente vs City of San Diego

Defendant City of San Diego's Demurrer to Plaintiff's Third Amended Complaint is sustained without leave to amend.

The court previously found Plaintiff failed to comply with the Government Claims Act ("Claims Act") by failing to provide the date of the breach. It is undisputed the Govt. Claims Act applies to the breach of contract claim. Under Govt. Code §910, the date is one of the requirements for a claim. In this case, Plaintiff's claim failed to provide a date of occurrence. (See Exhibit 2.) Therefore, Plaintiffs have failed to strictly comply with the Govt. Claims Act. The court gave Plaintiff leave to amend to allege Defendant's denial of the claim waived the obligation of Plaintiff to specify a date its claim arose. Plaintiff has failed to do so.

Under Govt. Code section 910.8, a public entity must send a notice of insufficiency if it contends the claim fails to comply with the Claims Act. In this case, the City provided Plaintiff with the notice of insufficiency of the claim on July 10, 1995. (TAC ¶15.) The City denied the claim on July 24, 1995, within the 15-day time frame set forth in Section 910.8. (TAC ¶20.) The City argues the premature denial of the claim has no effect. There are no cases directly on point with this issue and no specific remedy provided in the code for acting on the claim before the 15-day period runs. However, it would be antithetical to statutory interpretation to give words no meaning. A common sense interpretation of the 15-day bar on action after notice of insufficiency is the Legislature intended to provide the claimant an opportunity to cure the defect or supply missing information by amendment. (See, e.g. *Martinez v. County of Los Angeles* (1978) 78 Cal.App.3d 242, 245.) This interpretation is supported by the fact the claim may be amended even after the claim has been rejected as long as the time allowed to present the claim has not expired and no final action has been taken. (Govt. Code §910.6.) Rejection of the claim would be the final action. It would be inconsistent to interpret the 15-day ban on action as having no effect and render the language of the statute meaningless. Thus, the City's denial of the claim on July 24, 1995, was in contravention of Section 910.8.

However, the court finds there is substantial compliance. If the purpose of the 15-day grace period is to allow a claimant to cure an insufficiency and Border has alleged it amended the

claim, then the City substantially complied with the statute. The TAC alleges Border had a meeting with the City on July 19, 1995 and provided an amended claim at that time. (TAC ¶17.) The denial of the claim was provided after Plaintiff amended the claim. The doctrine of substantial compliance is derived from *Johnson v. City of Los Angeles* (1955) 134 Cal.App.2d 600. The doctrine is based on the premise substantial compliance advances the purpose of the claims statutes which is to provide timely notice of the nature of the claim to the public entity. (*Santee v. Santa Clara County Office of Educ.* (1990) 220 Cal.App.3d 702, 713.) Based upon the allegations in the TAC, Plaintiff was not penalized by the early denial since it had already attempted to amend the claim. Therefore, the demurrer is sustained without leave to amend.

In addition, the court finds abandonment, waiver, laches and estoppel do not apply to the defense of insufficiency of the claim. Compliance with the Govt. Claim Act is a mandatory legal requirement and failure to present a valid claim bars the action. (*State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1240.) Compliance is an element of a cause of action against a public entity. (*Id.*) Thus, abandonment, waiver, laches and estoppel do not bar Defendant's contention the claim is defective.

Defendant's Requests for Judicial Notice are granted. Defendant's requests for judicial notice are granted to the extent the Court notices the document exists, but not the truth of the matter asserted in the documents. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062.)

Defendant's motion to strike is moot.