



CITY OF SACRAMENTO

15

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
STEPHEN B. NOCITA
DIANE B. BALTER
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

September 3, 1982

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

CITY MANAGER'S OFFICE
RECEIVED
SEP 8 1982

APPROVED
BY THE CITY COUNCIL

RE: LATE CLAIM APPLICATION OF JAMES R. ERNST.

SEP 21 1982

Denial

Members in Session:

OFFICE OF THE
CITY CLERK

SUMMARY

James R. Ernst has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

James R. Ernst has applied for leave to present a late claim. His claim seeks damages for personal injury resulting from an auto collision caused by City's alleged failure to properly maintain a street.

Government Code Section 911.2 provides that a claim for personal injury shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on March 29, 1982, and the 100-day filing period expired on July 7, 1982. The late claim application was filed on September 1, 1982.

The application states that no claim was filed within the 100-day filing period because the applicant did not learn of the filing requirement until he consulted an attorney after the 100-day period had expired.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)). In order to obtain relief on this ground, it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1971) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that these standards have been met in the instant case.

SEP 21 1982

15


It is well settled that ignorance of the claim filing requirements and the 100-day filing period does not excuse the failure to file a timely claim. (Roberts vs. State, supra; Tsingaris vs. State (1979) 91 C.A.3d 312). The failure to consult an attorney within the 100-day period does not excuse the failure to file a timely claim (Bennett vs. City of Los Angeles (1970) 12 C.A.3d 116). The application contains no information suggesting that a claim could not have been presented in a timely fashion. In short, it does not appear that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person.

RECOMMENDATION

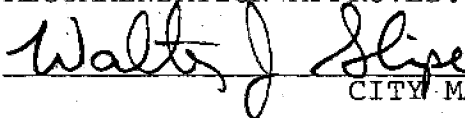
For the foregoing reasons it is recommended that the application of James R. Ernst for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney


DIANE B. BALTER
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

DBB:gd

15

GARY JOHNSON
MARK E. BIDDISON
STEPHEN A. KOONCE

RECEIVED
CITY CLERK'S OFFICE
JOHNSON & BIDDISON
CITY OF SACRAMENTO
819 I STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 447 8805

SEP 1 12 55 PM '82
Please refer to our _____

August 26, 1982

RETURN RECEIPT REQUESTED

City of Sacramento
City Hall
915 I Street
Sacramento, California 95814

In the matter of the Proposed Claim
of JAMES R. ERNST against the City of
Sacramento

APPLICATION TO PRESENT CLAIM UNDER
§ 911.4 OF THE GOVERNMENT CODE

TO: The City of Sacramento:

I, MARK E. BIDDISON, Attorney at Law, acting on behalf of and as attorney for the claimant, apply for leave to present a claim under Government Code §911.4. The claim is founded on a cause of action for personal injuries which resulted from an automobile accident on March 30, 1982, and for which a claim was not presented within the 100 day period provided for by Government Code §911.2. For additional circumstances relating to the cause of action, reference is made to the proposed claim attached to and incorporated as part of this application.

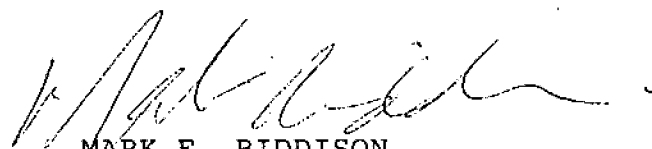
The reason for the delay in presenting this claim was through mistake and/or excusable neglect, and the City of Sacramento was not prejudice by the failure to present this claim within the time specified in Government Code §911.2, or as more particularly shown by the attached declaration of James R. Ernst.

I am presenting this application within a reasonable time after the accrual of this cause of action, as more particularly shown by the attached declaration of James R. Ernst.

WHEREFORE, I respectfully request that this application be granted and that the attached proposed claim be received and acted on in accordance with Government Code §§912.4 and 912.6.

DATED: August 26, 1982

Law Offices of
JOHNSON & BIDDISON



MARK E. BIDDISON
Attorney for Claimant,
JAMES R. ERNST

NOTICE OF PROPOSED CLAIM AND PROPOSED CLAIM
AGAINST THE CITY OF SACRAMENTO FOR DAMAGES

PLEASE TAKE NOTICE, that I, MARK E. BIDDISON, Attorney at Law, present this proposed claim on behalf of and as attorney for claimant, JAMES R. ERNST.

Claimant's address for all matters regarding this claim is:

§ Law Offices of
JOHNSON & BIDDISON
819 F Street
Sacramento, California 95814

The date, place, and circumstances of the occurrence or transaction giving rise to this claim are as follows:

On or about March 29, 1982, at approximately 12:00 pm., claimant was driving his motor vehicle northbound on Raley Blvd., at which time he attempted to pass a slower vehicle. Unknown to claimant, he was approaching the intersection of Santa Ana Avenue and Raley Boulevard, which intersection is uncontrolled and unmarked by any warning signs or other indication of the existence of an intersection. A motor vehicle driven by Steven J. Doerr turned from Santa Ana Avenue southbound onto Raley Boulevard striking claimant headon.

Claimant's vehicle, a 1972 Ford, was totally destroyed.

Mr. Ernst impacted the steering wheel of his vehicle with his face causing all of his front teeth to be broken off.

Claimant maintains that his injuries and resulting damages are, in substantial part, the result of the negligence of the City of Sacramento in failing to adequately maintain the street known as Raley Boulevard, and the failure to install and maintain adequate traffic control measures to warn oncoming traffic of the existence of the intersection of Santa Ana Avenue and the possibility of traffic merging onto Raley Boulevard therefrom.

The amount claimed as of the date of the presentation of this claim is as follows:

One Thousand Five Hundred Dollars (\$1,500.00) as and for property damage consisting of destruction of plaintiff's 1972 Ford automobile;

Two Thousand Dollars (\$2,000.00) as and for medical bills to date; and

Fifteen Thousand Dolalrs (\$15,000.00) as and for general damages.

WHEREFORE, Claimant requests that this claim be duly filed and noticed, and that the City of Sacramento grant the appropriate relief requested.

DATED: August 26, 1982

/S/ MARK E. BIDDISON
Law Offices of
JOHNSON & BIDDISON
By:
MARK E. BIDDISON

DECLARATION OF JAMES R. ERNST

I, JAMES R. ERNST, declare:

On or about March 29, 1982, I was involved in an automobile accident at the intersection of Raley Boulevard and Santa Ana Avenue, in the City and County of Sacramento, California.

The subject accident occurred while I was attempting to pass a slower vehicle while travelling northbound on Raley Boulevard. As I crossed over the broken yellow line to pass I was confronted by a vehicle making a right hand turn from Santa Ana Avenue onto Raley Boulevard, southbound. I Struck said vehicle head on causing injuries and damages complained of in my proposed claim against the City of Sacramento.

At the time I pulled out to pass, I was unaware of the existance of Santa Ana Avenue. There were no warning signs nor were there any changes in the striping on the highway to indicate that I was approaching an intersection. Santa Ana Avenue lays below the grade level of Raley Boulevard, and at the time that I attempted to pass I could not see the intersection of Santa Ana Avenue and Raley Boulevard.

I was cited for violation of Vehicle Code §21752, driving on the left side of the roadway within 100 feet of an intersection.

At the trial of said case I was not represented by an attorney, but I consulted an attorney who informed me that I had one (1) year within which to bring an action for personal injuries.

At the conclusion of said case, I consulted the Law Offices of Johnson & Biddison on July 28, 1982. At that time I was informed that a claim against a government entity must be filed within One Hundred Days (100) of the date of the occurrence. I thereupon requested Mark E. Biddison, of Johnson & Biddison to investigate this matter and prepare a request to file a late claim against the City of Sacramento.

DATED: 8/27/82

JAMES R. ERNST James R. Ernst



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

September 24, 1982

Johnson & Biddison
819 F Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF JAMES R. ERNST.
DATE OF ALLEGED INCIDENT: March 30, 1982

Dear Gentlemen:

You are hereby notified that your application for Leave to Present a Late Claim on behalf of the above named claimant was denied by the Sacramento City Council on September 21, 1982.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you your application is rejected.

Sincerely,

Anne Mason
Assistant City Clerk

AM/mlt/15
cc: City Attorney
Risk Management (2)

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5 (Claims Presentation Requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six (6) months of the date your Application for Leave to Present a Late Claim was denied.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.