



CITY OF SACRAMENTO

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STEPHEN B. NOCITA

CITY MANAGER'S OFFICE

December 26, 1979

Honorable City Council
Council Chamber
City Hall
Sacramento, CA 95814

RE: LATE CLAIM APPLICATION OF LEROY LEVENS

Members in Session:

SUMMARY

Leroy Levens 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

Mr. Levens has applied for leave to present a late claim. The claim seeks an unascertained amount of money damages as indemnification in the event that applicant is adjudicated liable in a personal injury lawsuit (Alvaro v. Miguel, et al., Sacramento Superior Court No. 280569). The lawsuit arose from an automobile accident. Applicant contends that the accident was caused in part by the allegedly defective condition of the roadway where it occurred.

Government Code Section 911.2 provides that a claim based upon injury to person or personal property shall be presented within 100 days of the accrual of the cause of action. The automobile accident occurred on October 29, 1978. The lawsuit was filed by Mrs. Alvaro on April 3, 1979. Claimant was originally served with process in said lawsuit on June 11, 1979. A demurrer to this original complaint was sustained by stipulation as to Mr. Levens. He was thereafter served with an amended complaint on September 4, 1979. The claim and late claim application were presented by applicant on November 21, 1979.

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

JAN 2 1979

ANALYSISAccrual of Cause of Action

Essential to a resolution of this application is a determination of when a cause of action for partial indemnity accrues within the meaning of Government Code Section 911.2. Government Code Section 901 indicates that a cause of action accrues within the meaning of Section 911.2 on the date that it would be deemed to have accrued for purposes of the statute of limitations which would be applicable if there were no claims filing requirement.

Applicant's cause of action is one for partial or comparative indemnity. This theory of recovery was recently given an exhaustive analysis by the California Supreme Court in American Motorcycle Association v. Superior Court, (1978) 20 Cal.3d 518. In that case the Court held that a defendant who has been brought into a lawsuit may thereafter file a cross-complaint for partial or comparative indemnity (20 C.3d at p. 606-607). Clearly no cross-complaint could be filed until the cause of action upon which it is based has accrued. Since the Court indicates that the defendant could file the cross-complaint for partial indemnity any time after being made a party to the action, by being served with process, it follows that the cause of action has accrued once such service has taken place.

This reasoning is supported by the general rule concerning accrual of a cause of action, which holds that a cause of action accrues "when a suit may be maintained thereon" (Dillon v. Board of Pension Commissioners, (1941) 18 Cal.2d 427, 430; see also Witkin 2 California Procedure, 1116-1117 and cases cited therein).

Presented with this precise issue, the Court in Gelman v. Superior Court, (1979) 96 Cal.App.3d 257 (decided August 24, 1979, published in Official Reports September 20, 1979), held that a cause of action for partial indemnity against the state accrues when the party seeking indemnification is served with process in the action which underlies the claim for indemnification. The Court also said that a claim for indemnification must be filed within 100 days following such service.

The Court in City of Redondo Beach v. Superior Court, (1979) 90 Cal.App.3d 25 also indicates that a cause of action for partial indemnification accrues upon service of process, and that a claim against a public entity based upon such cause of action must be presented within 100 days following such service (90 C.A.3d pp.30-31).

Thus, in the instant case applicant's cause of action appears to have accrued on June 11, 1979. A cross-complaint could have been filed at any time after that date, subject to the claims filing requirements. (Applicant's contention that the cause of action does not accrue until judgment has been rendered against him in the underlying lawsuit (Alvaro v. Miguel, et al.) is contrary to the decisions of the Court of Appeal in the Gelman and Redondo Beach cases, and appears to conflict with the rule pronounced by the Supreme Court in American Motorcycle Association v. Superior Court, supra.) The 100-day period for filing a claim therefore expired on or about September 19, 1979.

Late Claim Application

When applicant filed his claim and late claim application on November 21, 1979, he was over two months late. 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 Section 911.6(b)(1)). In order to obtain relief on any of such grounds it must appear that the applicant acted reasonably under the circumstances (Roberts v. State of California, (1974) 39 Cal.App.3d 844).

Seeking to explain his failure to file a timely claim, applicant contends that prior to the decision in Gelman, supra, the established law was that it would not be necessary to give notice of a claim to a public entity prior to maintaining an action or cross-complaint for partial indemnity. Applicant cites no cases in support of this contention.

As recognized by the Court in Gelman, supra, Government Code Section 905 provides that all claims for money damages shall be presented in accordance with the claims filing requirements. Section 905 provides several exceptions to this general rule, none of which appears to apply to a claim for partial indemnification. Therefore, on its face the requirement that a claim be filed applies to actions such as that sought to be maintained by applicant.

Moreover, the decision in Redondo Beach, supra, unequivocally states that a cause of action for partial indemnification is subject to the claims filing requirements. That decision also indicates that such cause of action accrues upon service of process in the underlying action.

Redondo Beach, supra, was decided on March 2, 1979, and published in the Official Advance Sheets on March 27, 1979, more

than two months prior to service of process upon applicant in our case. The claims filing requirements, which on their face apply to a cause of action for partial indemnification, have been in effect for years.

The courts have consistently held that ignorance of the claims filing requirement is no excuse for the failure to file a timely claim (Roberts v. State, supra; Bennett v. Los Angeles, (1970) 12 Cal.App.3d 116; Black v. Los Angeles, (1970) 12 Cal.App.3d 670).

Thus, in our opinion applicant has failed to state facts which show that the failure to file a claim within 100 days of service of process was due to mistake, inadvertence, surprise or excusable neglect of applicant and his attorney, under the standard of reasonableness required by the line of cases represented by Roberts v. State, supra.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Leroy Levens for leave to file a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

JPJ:jt

RECOMMENDATION APPROVED:

Walter J. Slive
City Manager



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

RECEIVED
NOV 30 1979
CITY ATTORNEY'S OFFICE

LORRAINE MAGANA
CITY CLERK

HUBERT F. ROGERS
CHIEF DEPUTY CITY CLERK

MEMORANDUM

TO: CITY ATTORNEY

FROM: CITY CLERK

RE:

Harvey Stevens
Name of applicant and date of accident

Enclosed is a copy of the late claim application which was received by the Sacramento City Clerk on Nov. 21, 1979.
(date)

The enclosed document was served on the City as follows:

Personal service.

Received in mail.

DATED:

Nov. 21, 1979

LORRAINE MAGANA
CITY CLERK

By:

Rose McVea



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5428

LORRAINE MAGANA
CITY CLERK

January 3, 1980

James C. Brown
GALLAWA, HOFFMAN & BROWN
1006 - 4th Street, 7th Floor
Sacramento, CA 95814

Dear Mr. Brown:

Notice is hereby given in accordance with Government Code Section 911.8 that your application for leave to present a late claim on behalf of Leroy Levens, relieving yourself of the claim filing requirements of Government Code Section 911.2 is without merit, pursuant to the bases set forth in Government Code Section 911.6. Said application was rejected by the City Council at its meeting of January 2, 1980.

Please note the "Warning" set forth below.

Sincerely,



Lorraine Magana
City Clerk

LM:HO'

cc: City Attorney
Finance (2)

Item No. 12

WARNING

If you wish to pursue your claim further, you may petition the court for relief of the claim filing requirements of Government Code Section 945.4. You have only six (6) months within which to seek relief from the Superior Court. This time period is deemed commenced at the time this notice was personally delivered, or deposited in the mail, whichever occurred first. The legal basis and provisions for this pro-

You may seek the advise of legal counsel of your choice if you have not done so already. If you desire legal counsel, you should consult an attorney immediately.

Nothing herein or any actions taken by the City Council or any of its officers, employees or agents, with regard to the above-referenced matter should be construed as a relinquishment or waiver of any legal requirement or any right or defense such as timeliness, sufficiency or proper presentation which may be available to the City Council or any of its officers, employees or agents.



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

January 8, 1980

James C. Brown, Esq.
Gallawa, Hoffman & Brown
1006 - 4th Street, 7th Floor
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MR. LEROY LEVENS,
DATE OF ALLEGED INCIDENT: JULY 11, 1979

Dear Sir:

You are hereby notified that your application for leave to present a late claim on behalf of Mr. Leroy Levens was denied by the Sacramento City Council on date of January 2, 1980.

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 that your application is rejected.

Very truly yours,

Lorraine Magana
City Clerk

LM:HO'

cc: City Attorney
Finance Administration (2)

Item No. 12

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 an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.