



CITY OF SACRAMENTO

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WILLIAM P. CARNAZZO
SABINA ANN GILBERT
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CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH ST SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

November 30, 1981

Honorable City Council
Council Chamber
City Hall
Sacramento, California 95814

RE: LATE CLAIM APPLICATION OF MICHELLE CAPAGLI

Members in Session:

DEC 15 1981

SUMMARY

Michelle Capagli 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

Ms. Capagli has applied for leave to present a late claim. The claim seeks damages for personal injuries and property damage allegedly suffered in an automobile accident which she claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim based upon personal injuries or property damage shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on November 12, 1980. The claim and late claim application were presented on November 12, 1981, one year after accrual of the cause of action.

The application states that applicant did not realize she had a potential cause of action against the City and was unaware of the 100 day filing period.

ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was presented within a reasonable time not to exceed one year after the accrual of the cause of action (Government Code §911.2 (b)); and (2), that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)(1)). In order to obtain relief on any of these grounds it must appear that the applicant acted with reasonable diligence

under the circumstances (Roberts vs. State (1971) 39 Cal.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that this standard has been met in the instant case.

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 discover the alleged basis of a cause of action also does not excuse the failure to file a timely claim (Tsingaris vs. State, supra; Black vs. County of Los Angeles (1970) 12 C.A. 3d 760). The application contains no information suggesting the cause of action against the City could not have been discovered 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.

In addition, the application was presented a full year after accrual of the cause of action. A delay of a shorter period has been held unreasonable (Martin vs. Madera (1968) 265 C.A.2d 76). It does not appear that the application was presented within a reasonable time under the circumstances.

RECOMMENDATION

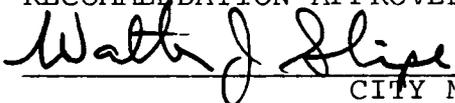
For the foregoing reasons it is recommended that the application of Michelle Capagli for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney


STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:GD
attachment

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

NOV 12 11 58 AM '81

1 Law Offices of
JOHNSON & BIDDISON
2 819 F Street
Sacramento, California 95814
3 (916) 447-8855

4 Attorney for Claimant

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6 APPLICATION FOR LEAVE TO PRESENT LATE CLAIM

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9 TO THE CITY CLERK, CITY OF SACRAMENTO:

10 MICHELLE CAPAGLI, Claimant herein, by and through her
11 Attorney, Law Offices of JOHNSON & BIDDISON, hereby applies for
12 Leave To Present a Late Claim under section 911.4 of the Govern-
13 ment Code. The Claim is founded on a cause of action for negli-
14 gence which accrued on November 12, 1980, and for which a Claim
15 was not timely presented. For additional circumstances relating to
16 the cause of action, reference is hereby made to the proposed Claim
17 attached hereto as Exhibit A and made a part hereof.

18 The reason for the delay in presenting this Claim is the
19 mistake, inadvertance, surprise, and excusable neglect of the
20 Claimant in that Claimant, as a lay person, was unaware of the
21 short limitation period for filing an action against a public
22 entity. Claimant did not become aware of her possible cause of
23 action against the City of Sacramento until October 1981, long
24 after the one hundred day limitation period, as provided for in
25 Government Code section 911.2 had run.

26 The City of Sacramento has not been prejudiced by the
27 failure to timely file the Claim in that the factual conditions
28 bearing on the accrual of the Claim herein have not changed since

1 the accrual of said Claim.

2 WHEREFORE, it is respectfully requested that this
3 Application be granted and that the attached Claim be received and
4 acted upon in accordance with sections 912.4-912.8 of the Govern-
5 ment Code.

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7 Dated:

/s/ GARY G. JOHNSON

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GARY G. JOHNSON on behalf of
Claimant

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1 Law Offices of
2 JOHNSON & BIDDISON
3 819 F Street
4 Sacramento, California 95814
5 (916) 447-8855

6 Attorney for Claimant

7
8 TO THE CITY CLERK, CITY OF SACRAMENTO:

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10 NOTICE OF CLAIM FOR DAMAGES

11 You will please take notice:

12 I, GARY G. JOHNSON, Attorney at Law, present this Claim
13 as a person acting on behalf of and as attorney for Claimant,
14 MICHELLE CAPAGLI.

15 Claimant's address for all matters regarding this Claim
16 is c/o Law Offices of JOHNSON & BIDDISON, 819 F Street, Sacramento,
17 California 95814.

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

20 On or about November 12, 1980 at about 9:00 p.m., Claimant
21 MICHELLE CAPAGLI was traveling in her automobile, southbound on
22 Carmela Way, a two lane City street. As she passed through the in-
23 tersection of Carmela Way and Murieta Way her automobile was struck
24 by an automobile traveling eastbound on Murieta Way, a two lane
25 City street.

26 Claimant was unable to see eastbound traffic on Murieta
27 Way because of a large tree, situated on the northwest corner of
28 the intersection of Carmela Way and Murieta Way, obstructing her
view. Said tree clearly violates the provisions of Sacramento City

1 Code section 38,22 which prohibits any hedge, shrubbery, natural
2 growth or other obstruction to the view higher than three foot six
3 inches,

4 As a proximate result of the maintenance of the above
5 dangerous condition by the City and as a proximate result of the
6 failure by the City of Sacramento to warn motorists of the above
7 dangerous condition Claimant was severely injured and, as a result
8 thereof, suffered damages.

9 The amount claimed as of the date of presentation of this
10 Claim is as follows:

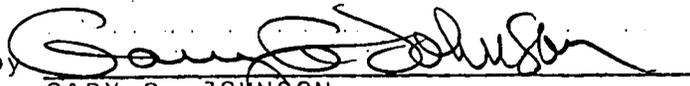
- 11 1. \$1,271.50 medical expenses;
- 12 2. \$1,925.26 auto repair;
- 13 3. \$1,000.00 loss of use of automobile; and
- 14 4. \$25,000.00 general damages.

15 WHEREFORE, Claimant requests that this Notice be duly
16 filed and noticed, and that the appropriate agency grant the relief
17 requested.

18
19 Dated:

Law Offices of
JOHNSON & BIDDISON

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by 
GARY G. JOHNSON
Attorney for Claimant,
MICHELLE CAPAGLI



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET

CITY HALL ROOM 203

December 16, 1981

SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

Johnson and Biddison
819 "F" Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF MICHELLE CAPAGLI. DATE OF ALLEGED
INCIDENT: NOVEMBER 12, 1980

Dear Mr. Johnson:

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 December 15, 1981.

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,

Lorraine Magana
Lorraine Magana
City Clerk

LM/mm/22

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.