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CITY OF SACRAMENTO

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

October 5, 1981
OFFICE OF THE
CITY CLERK

Honorable City Council
Council Chamber
City Hall
Sacramento, California

OCT 20 1981

RE: LATE CLAIM APPLICATION OF LEONA McMILLAN

Members in Session: SUMMARY

Leona McMillan 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. McMillan has applied for leave to present a late claim. The claim seeks damages for injuries allegedly suffered as a result of a fall she claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim of this type shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on April 14, 1981. The 100-day filing period expired on or about July 23, 1981. The claim and late claim application were presented on September 11, 1981, approximately seven weeks late.

The basis of the late claim application is that applicant did not know that the City owned the property in question and she 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 accrual of the cause of action (Government Code §911.4(b)), and (2) that the failure to present a timely claim was due to mistake, inadvertence, surprise or excusable neglect (Government Code §911.6(b)). In order to obtain relief on any of these grounds it must appear that applicant acted reasonably under the circumstances. (Roberts vs. State (1974) 39 C.A.3d 844; Tsingarlis vs. State (1979) 91 C.A.3d 312; El Dorado Irr. Dist. vs. Superior Court (1979) 98 C.A.3d 57; City of Fresno vs. Superior Court

(1980) 104 C.A.3d 25). It does not appear to us that this standard has been met.

Ignorance of the claim filing requirements and the 100-day filing period is not a sufficient basis to justify the failure to file a timely claim (Roberts vs. State, supra; Tsingaris vs. State, supra). The failure to discover the alleged basis of a cause of action against a public entity is not a sufficient basis to excuse the lack of a timely claim. (Tsingaris vs. State, supra; Black vs. County of Los Angeles (1970) 12 C.A.3d 760). The application contains no information indicating that the facts giving rise to 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, it does not appear that the application was presented within a reasonable time under the circumstances. Applicant consulted her attorney on the 100th day after the accident. The attorney is charged with knowledge of the claim filing requirements and the 100-day filing period. Yet the claim and late claim application were not filed until seven weeks late. The application demonstrates that an investigation revealed the alleged basis of the cause of action against the City. If, as applicant claims, the City owns the property in question, this fact could have been ascertained easily and quickly. Under these circumstances it does not appear that the application was presented within a reasonable time.

RECOMMENDATION

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

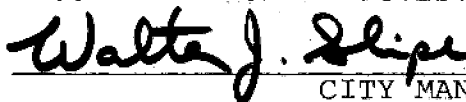
Very truly yours,

JAMES P. JACKSON
City Attorney



STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:


CITY MANAGER

SBN:GD

RECEIVED
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PANATTONI, WESTLEY, FARRELL & FRAUJLOB
A PROFESSIONAL CORPORATION
1819 K STREET, SUITE 201
POST OFFICE BOX 2770
SACRAMENTO, CALIFORNIA 95812
(916) 442-5835

Attorneys for Claimant

TO: CITY OF SACRAMENTO
City Clerk's Office
915 I Street
Sacramento, California

In the matter
of the claim of

LEONA McMILLIN,

Plaintiff,

vs.

CITY OF SACRAMENTO,

Defendants.

APPLICATION FOR LEAVE TO PRESENT
LATE CLAIM

1. Application is hereby made for leave to present a late claim founded on a cause of action for personal injuries which occurred on April 14, 1981, and for which a claim was not presented within the 100 day period provided by Section 911.2 of the Government Code. For additional circumstances related to the cause of action, reference is made to the proposed claim attached to this application.

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1 2. The reason that no claim was presented during
2 the period of time provided by Section 911.2 of the Government
3 Code is that claimant was not aware that she had a cause of
4 action against any public entity, and was not aware that a
5 100 day statute existed.

6 3. This application is being presented within a
7 reasonable time after the accrual of this cause of action as
8 more particularly shown by the attached Declaration of Leonard
9 C. Panattoni, Attorney at Law.

10 WHEREFORE, it is respectfully requested that this
11 application be granted and that the attached proposed claim
12 be received and acted on in accordance with Section 912.4 -
13 912.8 of the Government Code.

14 DATED: September 8, 1981.

15 PANATTONI, WESTLEY, FARRELL & FRAULOB
16 A Professional Corporation

17 BY _____
18 LEONARD C. PANATTONI

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1 CLAIM AGAINST CITY OF SACRAMENTO

2 TO: CITY OF SACRAMENTO
3 City Clerk's Office
4 915 I Street
5 Sacramento, California

6 CLAIMANT'S NAME: LEONA McMILLIN

7 CLAIMANT'S ADDRESS: 1628 Eldridge Avenue
8 Sacramento, CA

9 CLAIMANT'S PHONE NUMBER: (916) 920-2942

10 AMOUNT OF CLAIM: \$100,000 with damages continuing.

11 ADDRESS TO WHICH NOTICES
12 ARE TO BE SENT: PANATTONI, WESTLEY, FARRELL
& FRAULOB
P.O. Box 2770
Sacramento, CA 95812

13 DATE OF OCCURRENCE: April 14, 1981

14 PLACE OF OCCURRENCE: Adjacent to Fair Oaks Blvd.
15 in the City of Sacramento,
16 California, northeast corner
of the intersection of Fair
Oaks Blvd. and Howe Avenue.

17 HOW DID THE ACCIDENT OCCUR: Claimant LEONA McMILLIN was
18 walking from the parking lot of Camellia Convalescent Hospital,
19 across a field adjacent to Fair Oaks Blvd., for the purpose
20 of reading a gas meter located thereon, when she fell into
21 a large trench covered and hidden by tall weeds. The fall
22 resulted in claimant LEONA McMILLIN suffering severe and con-
23 tinuing injuries, including a dislocated knee and torn cartilage.

24 ITEMIZATION OF CLAIM FOR CLAIMANT LEONA McMILLIN: Medical expenses, wage loss,
25
26 pain, suffering, fear, anxiety, and emotional distress in the
27 amount of \$100,000 as of this date, with said loss and damages

28 /////

1 continuing and claimant reserving the right to claim additional
2 damages as and when they occur.

3 DATED: September 8, 1981.

4 PANATTONI, WESTLEY, FARRELL & FRAULOB
5 A Professional Corporation

6
7 BY _____
8 LEONARD C. PANATTONI

9 DECLARATION OF LEONARD C. PANATTONI

10 I, LEONARD C. PANATTONI, declare that:

11 I am an attorney duly licensed to practice law before
12 all of the courts of the State of California and am with the
13 law firm of PANATTONI, WESTLEY, FARRELL & FRAULOB, A Professional
14 Corporation, attorneys of record for the claimant.

15 Said claimant did not realize that a cause of action
16 existed against the City of Sacramento, nor that a claim must
17 be filed within 100 days as a condition thereto. The matter
18 was referred to this office on the afternoon of July 23, 1981,
19 in connection with a possible workers' compensation claim.

20 Said date was the 100th day of the statutory period. Only
21 thereafter, upon investigation by this office of the subject
22 incident, was it discovered that the City of Sacramento was
23 the owner of the property upon which claimant was injured.

24 A late claim has now been prepared and is presented
25 for filing herewith.

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1 I declare under penalty of perjury that the foregoing
2 is true and correct.

3 Executed September 8, 1981, at Sacramento, California.

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5 LEONARD C. PANATTONI
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CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK

915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-5426

LORRAINE MAGANA
CITY CLERK

October 21, 1981

Panattoni, Westley, Farrell & Fraulob
A Professional Corporation
1819 K Street, Suite 201
Sacramento, CA 95812
Attn: Leonard C. Panattoni

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF LOENA McMILLIN, DATE OF ALLEGED
INCIDENT, APRIL 14, 1981

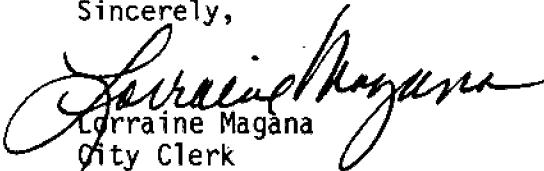
Dear Mr. Panattoni:

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 October 20, 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 claims filing requirements.

Accordingly, I must inform you that your application is rejected.

Sincerely,


Lorraine Magana
City Clerk

LM/mm/14

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 (Claim Presentation Requirement). See Government Code Section 946.6. Such a petition must be filed with the court within six months of the date your application for leave 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.