



CITY OF SACRAMENTO

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

January 21, 1982

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

Honorable City Council
Council Chamber
City Hall
Sacramento, Ca. 95814

RE: LATE CLAIM APPLICATION OF DAVID ZAVAS

Members in Session:

APPROVED
BY THE CITY COUNCIL

FEB 2 1982

OFFICE OF THE
CITY CLERK

SUMMARY

David Zavas 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. Zavas has applied for leave to present a late claim. This claim seeks damages for personal injuries allegedly suffered in an automobile accident which he claims was caused by a dangerous condition on public property.

Government Code §911.2 provides that a claim based upon personal injuries shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on July 28, 1981. The 100 day filing period expired on November 5, 1981. A claim was presented on his behalf on November 12, 1981, only seven days late.

Because the claim was untimely it was returned to applicant's attorney, with an advisory note that a late claim application could be filed and that this should be done promptly. However, the late claim application was not presented until January 8, 1982, a delay of approximately eight weeks.

The reason given for the failure to file a timely claim is that applicant was unaware of the 100 day claim filing requirement.

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 C.A.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.

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 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.

In addition, it does not appear to us that the late claim application was presented within a reasonable time under the circumstances. Applicant was represented by an attorney. The attorney was advised that a late claim application should be filed promptly. Instead, without explanation the attorney allowed more than eight weeks to lapse before attending to the matter. "It is not the purpose of the remedial statutes to grant relief from defaults which are the result of inexcusable neglect of parties or their attorneys in the performance of the latter's obligations to their clients." (Tammen vs. County of San Diego (1966) 66 C.2d 468, 478).

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slupe

CITY MANAGER

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CITY OF SACRAMENTO
JAN 8 12 10 PM '82

1 Green, Green & Green
2 Attorneys at Law
3 901 H Street, Suite 110
4 Sacramento, CA 95814
5 (916) 447-3367

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

6 Attorneys for Claimant

8 FEB 2 1982

9 In the Matter of the
10 Claim of DAVID ZAVAS

APPLICATION FOR
LEAVE TO
PRESENT
LATE CLAIM

11
12 against CITY OF SACRAMENTO
13

14 TO: City of Sacramento

15 1. Application is hereby made for leave to present a late
16 claim under Section 911.4 of the Government Code. The claim is
17 founded on a cause of action for personal injury, which accrued
18 on July 28, 1981, and for which a claim was not timely presented.
19 For additional circumstances relating to the cause of action,
20 reference is made to the proposed claim attached hereto as
21 Exhibit A and made a part hereof.

22 2. The reason for the delay in presenting this claim is the
23 mistake, inadvertence, surprise, and excusable neglect of the
24 claimant as more particularly shown in the declaration of
25 Marion R. Green attached hereto. City of Sacramento was not
26 prejudiced by the failure to timely file the claim as shown by
27 the declaration of Marion R. Green attached hereto as Exhibit B
28 and made a part hereof.

29 3. This application is presented within a reasonable time
30 after the accrual of the cause of action as shown by the
31 declaration of Marion R. Green attached hereto as Exhibit B and
32 made a part hereof.

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CITY OF SACRAMENTO

JAN 8 1 10 PM '82

1 Green, Green & Green
2 Attorneys at Law
3 901 H Street, Suite 110
4 Sacramento, CA 95814
5 (916) 447-3367

6 Attorneys for Claimant

7 In the Matter of the
8 Claim of DAVID ZAVAS
9 against CITY OF SACRAMENTO

DECLARATION OF
MARION R. GREEN
IN SUPPORT OF
APPLICATION TO
PRESENT A LATE
CLAIM

11 I, MARION R. GREEN, do declare:

12 I am an attorney duly licensed under the laws of the State of
13 California and I am a member in good standing of the State Bar
14 of California.
15

16 My firm, Green, Green, & Green, Attorneys at Law, has been
17 retained to represent Mr. DAVID ZAVAS, claimant herein, for the
18 above entitled claim.

19 I have been informed and do believe that the accident which
20 is the basis of this claim occurred on or about July 28, 1981.
21 A claim was filed on November 12, 1981 with the City of Sacramento
22 by personal service. This was about 107 days after the accident.

23 Mr. ZAVAS retained our firm on November 11, 1981 to handle this
24 matter. The claim was filed immediately.

25 I have been informed and do believe that Mr. ZAVAS was not aware
26 of any time period to file against the city. Mr. ZAVAS had just
27 moved to California from Idaho.

28 I declare, under penalty of perjury, that the foregoing is true
29 and correct except as to those matters stated on information and
30 belief and as to those matters I believe true and that this
31 declaration was executed on January 5, 1982, at Rocklin,
32 California.

33 
34 _____
35 Marion R. Green

36 Attorney for Claimant

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CITY CLERK'S OFFICE
CITY OF SACRAMENTO

JAN 8 12 10 PM '82

1 Green, Green & Green
2 Attorneys at Law
3 901 H Street, Suite 110
4 Sacramento, CA 95814
5 (916) 447-3367

6 Attorneys for Claimant

7 In the Matter of the
8 Claim of DAVID ZAVAS
9 against CITY OF SACRAMENTO

DECLARATION OF
MARION R. GREEN
IN SUPPORT OF
APPLICATION TO
PRESENT A LATE
CLAIM

10
11
12 I, MARION R. GREEN, do declare:

13 I am an attorney duly licensed under the laws of the State of
14 California and I am a member in good standing of the State Bar
15 of California.

16 My firm, Green, Green, & Green, Attorneys at Law, has been
17 retained to represent Mr. DAVID ZAVAS, claimant herein, for the
18 above entitled claim.

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20 is the basis of this claim occurred on or about July 28, 1981.
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34 
35 Marion R. Green

36 Attorney for Claimant

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CITY OF SACRAMENTO
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1 GREEN, GREEN & GREEN
2 Attorneys at Law
3 901 H Street, Suite 110
4 Sacramento, CA 95814
5 (916) 447-3367

6 Attorneys for Claimant

7 TO: City of Sacramento

8 David Zavas hereby makes claim against City of Sacramento for
9 the sum of \$500,000.00 and makes the following statements in support
10 of the claim:

11 1. Claimant's post office address is 5849 Sunrise Vista Drive
12 #10, Citrus Heights, California 95610.

13 2. Notices concerning the claim should be sent to GREEN, GREEN
14 & GREEN, Attorneys at Law, 5875 Pacific Street, Suite D, Rocklin,
15 California 95677.

16 3. The date and place of the occurrence was July 28, 1981 at
17 C Street and 12th Street, Sacramento, Sacramento County, California.

18 4. The circumstances giving rise to this claim are as follow:
19 On or about July 28, 1981, David Zavas was driving his passenger
20 vehicle eastbound on C Street. While Mr. Zavas was attempting to
21 cross 12th Street, Mr. David Leonard attempted to negotiate a left
22 turn from C Street, westbound, onto 12th Street. Mr. Leonard turned
23 into Mr. Zavas' vehicle.

24 Mr. Leonard turned without looking straight ahead or to his
25 left because of the heavy traffic on 12th Street. C Street is
26 controlled by a stop sign. There are no controls for 12th Street
27 traffic.

28 5. As a direct and proximate result of the accident Mr. Zavas
29 received serious injuries and/or aggravated pre-existing injuries
30 resulting in damage to his person.

31 6. The names of the public employees causing the claimant's
32 injuries are unknown. However, the City of Sacramento designed,
33 built and maintains the public roadways at C Street and 12th Street
34 which is the site of this accident. The intersection is unsafe
35 because of heavy traffic conditions, the proximal location of the
36 underpass on 12th Street and the lack of traffic controls.

1 7. The claim, as of this date, is in the amount of \$500,000.00.

2 8. The basis of compensation of the above is as follows:
3 medical bills in an amount as yet unascertained; of lost income in an
4 amount as yet unascertained. It is anticipated that the medical
5 expenses and loss of wages will continue to incur. General damages
6 in the amount of \$500,000.00 are requested, and it is anticipated
7 that general damages will also continue to incur. Upon request, the
8 medical expenses and total actual loss wages will be presented if
9 available.

10
11 Dated: November 11, 1981



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13
14 Marion R. Green
15 on Behalf of Claimant
16
17
18
19
20



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

February 3, 1982

Green, Green and Green
Attorneys at Law
901 "H" Street, Suite 110
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF DAVID ZAVAS
DATE OF ALLEGED INCIDENT: July 28, 1981

Dear Mr. Green:

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 February 2, 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,


Lorraine Magana
City Clerk

LM/mm/13

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.