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CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
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ASSISTANT CITY ATTORNEY
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DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

April 3, 1980

Honorable City Council
City Hall
Council Chamber
Sacramento, Califoria 95814

RE: LATE CLAIM APPLICATION - MARY CLARKE

Members in Session:

SUMMARY

Mary Clarke 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. Clarke has applied for leave to present a late claim. The claim seeks money damages for losses allegedly incurred as a result of an unlawful seizure of personal property.

Government Code section 911.2 provides that a claim for damages based upon injury to personal property shall be presented within 100 days of the accrual of the cause of action. Applicant's alleged cause of action accrued upon the unlawful taking of her property (First National Bank vs. Thompson (1943) 60 C.A.2d 79), which in this case was October 2, 1978. The 100-day period for filing a timely claim expired on or about January 10, 1979. The instant claim was first presented on February 22, 1980, well over one year late; the application to present a late claim was filed on March 27, 1980.

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 section 911.4(b)); and (2) 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 these grounds it must appear that the applicant acted reasonable under the circumstances Roberts vs. State of California (1974) 39 C.A.3d 844.

The application asserts that the failure to file a timely claim was due to applicant's reliance upon a series of negotiations which took place between herself, the Internal Investigations Section of the Police Department, staff of the City Manager's Office, and a council member.

Neither the material presented in support of the late claim application nor information obtained in our own investigation of the application suggests that these so-called "negotiations" involved a claim seeking monetary relief or compensation for Ms. Clarke. It does not appear that she was told she would not have to file a claim if she wished to recover damages, nor that she would receive damages for the incident without the filing of a claim.

In addition, the available records indicate that any "negotiations" involving return of the seized property ended in early 1979. A delay until 1980 before presenting a claim based upon the allegedly wrongful seizure does not appear to be the conduct of a reasonable person under the circumstances.

Moreoever, since the claim and application were not presented "within a reasonable time not to exceed one year after the accrual of the cause of action" (Government Code section 911.5(b)), the showing necessary to granting the requested relief cannot be made.

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slipe
CITY MANAGER

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

HUBERT F. ROGERS
CHIEF DEPUTY CITY CLERK

March 10, 1980

Mary Clarke
6219 Riverside Blvd., #4
Sacramento, CA 95831

RE: Claim against the City of Sacramento

Dear Mary Clarke:

We are returning your claim against the City of Sacramento which was received in this office on February 22, 1980.

California State law requires claims against a public entity be filed within one hundred days from the date of the action giving rise to the claim. Therefore, your claim was not timely filed.

If you wish to refile this claim, you must also submit an application for leave to present a late claim, stating why your claim was not timely filed. If you wish to do so, you should act promptly in order to preserve other rights under the California Government Code.

Sincerely,

Jaci Pappas
Acting City Clerk

JP/jl

Enclosure

cc: City Attorney

CLAIM AGAINST THE CITY OF SACRAMENTO

You are hereby notified that (1) Mary Clarke, whose Post Office address is (2) 6219 Riverside Blvd. #4 Sacramento, CA. 95831 claims damages from the City of Sacramento in the amount, computed as of the date of the presentation of this claim, of (3) $ 1,297.00. This claim is based upon: (4) ( ) Personal injury; ( ) Property damage or loss; ( ) Other, specify 1973 Yamaha, Motorcycle, which occurred on or about (5) 10 / 2 / 78, in the vicinity of (6) 6219 Riverside Blvd. #4 Sacramento, CA. 95831 under the following circumstances: (7) The Sacramen Police Department removed a 1973, Motorcycle from the patio of my back yard. This Motorcycle was not stolen, nor embezzled. (Under vehicle code 22653.) Removal From Private Property.

The name of the City employee or employees causing the claimant's injury or loss under the circumstances described is (8) Sacramento Police Department _____ or is unknown to the claimant.

The injuries to the claimant, (if any), as far as known at the date of presentation of the claim consists of (9) A most distressing situation inwhich my health was affected by the remover of the motorcycle. I, lost three days from my job over this incident.

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

Damages incurred to date: (Itemized)

(10) Motorcycle taken - Never returned. No used of this vehicle from the 2nd of October 1978, to this date February 22, 1980. (Time period still open) $ _____

Estimated prospective damages as far as known:

(11) Lost of three days work. Anxiety and exhaustion in $ _____ trying to get the Sacramento Police Department to release my motorcycle has been in vain. $ _____

(12) Total amount claimed as of date of presentation of claim: $ 5,000.00

All notices and communications with regard to this claim should be sent to claimant at:

(13) Mary Clarke 6219 Riverside Blvd. #4 Sacramento, CA. 95831

DATED: (14) February 22, , 19 80

(15) SIGNED: Mary Clarke
Claimant or Attorney for Claimant

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
FEB 22 4 23 PM '80

DANIEL ROBERT LANG
Attorney at Law
9915 Grant Line Road
Elk Grove, California 95624
Telephone: (916) 685-9898

Attorney for Claimant

In the Matter of the Proposed Claim of

MARY A. CLARKE

Against CITY OF SACRAMENTO

APPLICATION FOR LEAVE TO PRESENT LATE CLAIM ON BEHALF OF CLAIMANT

TO: JAMES P. JACKSON, City Attorney
CITY OF SACRAMENTO - c/o City Clerk
STEPHEN B. NOCITA, Deputy City Attorney
812 10th Street, Suite 201
Sacramento, California 95814

1. MARY A. CLARKE, Claimant, hereby applies to the CITY OF SACRAMENTO for leave to present attached claim against said CITY OF SACRAMENTO, pursuant to Section 911.4 of the California Government Code.

2. The cause(s) of action for continuing trespass to chattels (wrongful continuing detention of a 1973 Yamaha motorcycle admittedly, wrongfully seized by said CITY OF SACRAMENTO (see Exhibit "A", Walter M. Thompson's, Citizens Assistance Officer, document attached hereto and incorporated by reference as though fully set forth herein) and to date never yet returned despite continuing possession by CITY OF SACRAMENTO. This wrongful seizure occurred on or about October 2, 1978 and is of a continuing nature and has not yet resulted in conversion of said motorcycle, thence the cause of action for trespass to chattels is on a continuing accrual basis, a period within one year of this application.

3. MARY A. CLARKE'S reason for the delay in presenting her claim against CITY OF SACRAMENTO is as follows:

(a) The failure to present the claim previously was through mistake, inadvertence, surprise, or excusable negligence and also was a direct result of reliance upon a continuing series of negotiations including internal letters with the CITY OF SACRAMENTO and Claimant MARY A. CLARKE to the effect that a negotiated release of the motorcycle following a full report that was in a continuing administrative procedure in process.

(b) Claimant has been in reliance upon efforts of her CITY COUNCILMAN along with communications with various officials of the SACRAMENTO CITY MANAGER'S OFFICE with regard to obtaining an administrative action to return said motorcycle to her. Although by its own admission (see attached Exhibit "B" incorporated by reference as though set forth in detail herein) which is CITY OF SACRAMENTO'S documents indicating that the initial seizure and detention was wrongful and illegal, and although the said CITY OF SACRAMENTO did authorize the release of the vehicle to Claimant MARY A. CLARKE, it is Claimant's postion that: The mere offer to release the vehicle from a storage yard is insufficient in that it would necessitate an expenditure of her time and money to go to said place and obtain the vehicle. Therefore, it is Claimant's position that the CITY OF SACRAMENTO owed and continues to owe a duty to Claimant to freely and voluntarily,and at its own expense, return the vehicle to Claimant's residence which was the place of the original wrongful seizure.

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4. Notwithstanding any of the foregoing, it is Claimant's position that: (1) The tort of trespass to chattels is a continuing tort and therefore the cause of action from trespass to chattels continues to accrue and therefore her original claim dated and received by CITY OF SACRAMENTO on or about February 22, 1980 was and remains timely; and (2) In the alternative that for the reasons set forth above, to wit, an ongoing administrative process involving her CITY COUNCILMAN and members of the CITY MANAGER'S OFFICE as shown in Exhibit "A" constitutes grounds for granting of this application to file late claim against public entity in recognition of said administrative process; and (3) and in the further alternative said CITY OF SACRAMENTO is estopped to assert the bar of untimely presentation when said entity by and thru its officers and agents has made continuing representations to Claimant that the matter was being further investigated and that in reliance thereon Claimant did not file her 100-day claim being that a claim was not yet due in view of said negotiations.

(PLEASE TAKE NOTICE THAT THE UNDERSIGNED ATTORNEY REPRESENTS THE INTERESTS OF CLAIMANT AND ALL FUTURE CORRESPONDENCE SHOULD BE IN DUPLICATE TO BOTH THE CLAIMANT AND TO THE UNDERSIGNED ATTORNEY.)

WHEREFORE, it is respectfully requested that this application be granted and that the attached proposed claim be received and acted on.

DATED: March 24, 1980

DANIEL ROBERT LANG
Attorney for Claimant

DANIEL ROBERT LANG
ATTORNEY AT LAW
9915 Grant Line Road
Elk Grove, Ca. 95624

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within/above entitled action. My business address is 9915 Grant Line Rd., Elk Grove, California 95624. On this date I served the foregoing document, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Sacramento County, California, addressed in the manner set forth herein. I declare under penalty of perjury that the foregoing is true and correct.

Date March 24, 1980

Signed

City of Sacramento

CALIFORNIA

LLOYD G. CONNELLY
COUNCILMAN, DISTRICT 6
CITY HALL
915 I STREET
SACRAMENTO, CALIFORNIA 95814
(916) 449-5406

RESIDENCE
4140 - 62ND STREET
SACRAMENTO, CALIFORNIA 95820
(916) 455-8950

December 22, 1978

Mr. Walter Thompson
City Manager's Office

Walt:

It is my understanding you are investigating the problems Mrs. Mary Clarke encountered on October 2, with regard to the actions of the Sacramento Police Department--specifically involving the requisition of a 1973 Yamaha.

After you have had an opportunity to investigate this matter, it would be appreciated if you would report back.

Thank you for your assistance.

Cordially,

Lloyd G. Connelly
City Councilman
District 6

LGC:mpb

EXHIBIT B