



CITY OF SACRAMENTO

17

CITY MANAGER'S OFFICE
RECEIVED
APR 7 1980

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

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
DAVID BENJAMIN
SAM JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
DEPUTY CITY ATTORNEYS

April 3, 1980

REJECTED
BY THE CITY COUNCIL
OFFICE OF THE
CITY CLERK

Honorable City Council
City Hall
Council Chamber
Sacramento, California 95814

APR 15 1980

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

April 3, 1980

(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.

Moreover, 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 B. Nocita
STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slize
CITY MANAGER



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

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

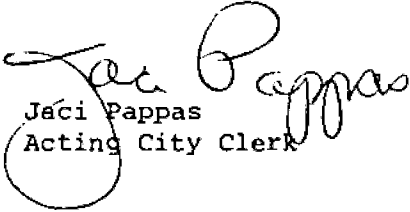
Dear Mary Clarke:

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 Sacramento 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 vehiçle 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

FEB 22 4 23 PM '80

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

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

RECEIVED
MAR 27 1980
CITY ATTORNEY'S OFFICE

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO

MAR 27 12 14 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)	APPLICATION FOR
)	LEAVE TO PRESENT
MARY A. CLARKE)	LATE CLAIM ON
)	BEHALF OF CLAIMANT
Against CITY OF SACRAMENTO)	
)	

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.

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

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

10
11 (b) Claimant has been in reliance upon efforts of her CITY
12 COUNCILMAN along with communications with various officials of the
13 SACRAMENTO CITY MANAGER'S OFFICE with regard to obtaining an
14 administrative action to return said motorcycle to her. Although
15 by its own admission (see attached Exhibit "B" incorporated by
16 reference as though set forth in detail herein) which is CITY OF
17 SACRAMENTO'S documents indicating that the initial seizure and
18 detention was wrongful and illegal, and although the said CITY OF
19 SACRAMENTO did authorize the release of the vehicle to Claimant
20 MARY A. CLARKE, it is Claimant's position that: The mere offer to
21 release the vehicle from a storage yard is insufficient in that it
22 would necessitate an expenditure of her time and money to go to
23 said place and obtain the vehicle. Therefore, it is Claimant's
24 position that the CITY OF SACRAMENTO owed and continues to owe a
25 duty to Claimant to freely and voluntarily, and at its own expense,
26 return the vehicle to Claimant's residence which was the place of
27 the original wrongful seizure.

28 ///

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

17
18 (PLEASE TAKE NOTICE THAT THE UNDERSIGNED ATTORNEY REPRESENTS THE
19 INTERESTS OF CLAIMANT AND ALL FUTURE CORRESPONDENCE SHOULD BE IN DUPLICATE
20 TO BOTH THE CLAIMANT AND TO THE UNDERSIGNED ATTORNEY.)

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

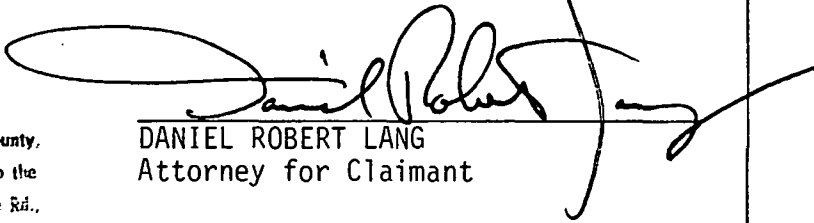
23 DATED: March 24, 1980

24
25 DECLARATION OF SERVICE BY MAIL

26 I am a citizen of the United States and a resident of Sacramento County,
27 California. I am over the age of eighteen years and not a party to the
28 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

Signed


DANIEL ROBERT LANG
Attorney for Claimant

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



City of Sacramento
CALIFORNIA

LLOYD G. CONNELLY
COUNCILMAN, DISTRICT 6
CITY HALL
915 I STREET
SACRAMENTO, CALIFORNIA 95814
(916) 448-5408

RESIDENCE
4140 - 62ND STREET
SACRAMENTO, CALIFORNIA 95820
(916) 485-8950

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~~