

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D56661  
G/htr

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Argued - April 26, 2018

ALAN D. SCHEINKMAN, P.J.  
REINALDO E. RIVERA  
CHERYL E. CHAMBERS  
HECTOR D. LASALLE, JJ.

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2016-02733

DECISION & ORDER

Christopher Michael Costello, appellant, v State of  
New York, respondent.

(Claim No. 123132)

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Pollack, Pollack, Isaac & De Cicco, LLP, New York, NY (Brian J. Isaac of counsel),  
for appellant.

Barbara D. Underwood, Attorney General, New York, NY (Anisha S. Dasgupta,  
Matthew W. Grieco, and Caroline Olsen of counsel), for respondent.

In a claim to recover damages for personal injuries, the claimant appeals from an order of the Court of Claims (Gina M. Lopez-Summa, J.), dated September 25, 2015. The order granted the defendant's motion for summary judgment dismissing the claim and denied the claimant's cross motion to deem its notice of claim timely served nunc pro tunc.

ORDERED that the order is affirmed, with costs.

On March 16, 2011, the claimant was driving on Sunrise Highway and, after missing his exit, attempted to cut across the strip of land separating Sunrise Highway from the exit ramp, losing control of his vehicle and sustaining injuries. After being granted permission to file a late notice of claim, the claimant served the claim on the State of New York by regular mail. The State moved for summary judgment dismissing the claim on the ground that service was improper, as it was not made in accordance with Court of Claims Act § 11. The claimant cross-moved for the court to deem its notice of claim timely served nunc pro tunc. The Court of Claims granted the motion and denied the cross motion. The claimant appeals, and we affirm.

We agree with the Court of Claims' determination to grant the State's motion for

September 26, 2018

Page 1.

COSTELLO v STATE OF NEW YORK

summary judgment dismissing the claim, as the claim was improperly served upon the State by regular mail rather than by personal service or certified mail as required by Court of Claims Act § 11 (see *Brown v State of New York*, 114 AD3d 632, 632-633; *Adkison v State of New York*, 226 AD2d 409).

The claimant's remaining contentions are without merit.

SCHEINKMAN, P.J., RIVERA, CHAMBERS and LASALLE, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court