

Foreman v City Univ. of N.Y.
2006 NY Slip Op 30870(U)
May 30, 2006
Court of Claims
Docket Number: Claim No. 102476
Judge: Melvin L. Schweitzer
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FOREMAN v. CITY UNIVERSITY OF NEW YORK, #2006-036-534, Claim No. 102476, Motion No. M-71104

Synopsis

Claim sufficiently identified the “time” of accrual within the meaning of Court of Claims Act § 10(6), by identifying the month of accrual, where the specific date of the alleged breach of contract was unclear and the claim contained sufficient information to allow a thorough investigation.

Case Information

UID: 2006-036-534
Claimant(s): LYNFORD FOREMAN
1 1.The court amends the caption as indicated.
Claimant short name: FOREMAN
Footnote (claimant name) :
Defendant(s): CITY UNIVERSITY OF NEW YORK
Footnote (defendant name) : The court amends the caption as indicated.
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): 102476
Motion number(s): M-71104
Cross-motion number(s):
Judge: MELVIN L. SCHWEITZER
Claimant’s attorney: NEVILLE W. McFARLANE, ESQ.
ELIOT SPITZER, ATTORNEY GENERAL
Defendant’s attorney: By: Diana Dykes and Susan Pogoda, Assistant Attorneys General
Third-party defendant’s attorney:
Signature date: May 30, 2006
City: New York
Comments:
Official citation:
Appellate results:
See also (multcaptioned case)

This is defendant's motion to dismiss a breach of contract claim on two grounds: first, insofar as it purports to be brought against the State of New York, all of the allegedly actionable conduct was committed by the City University of New York (CUNY), not the State of New York; also because it allegedly fails to comply with Court of Claims Act § 11(b) by not stating a specific date of accrual, the motion seeks dismissal of the claim in its entirety for lack of jurisdiction.^[2] Defendant's argument with respect to the proper party-defendant is correct. CUNY and the State of New York are distinct parties and claimant's allegations herein, other than a *pro forma* reference in the claim to the State of New York, implicate only CUNY. Thus, the motion is granted to the extent that the State of New York is stricken from the caption.

With respect to defendant's jurisdictional argument concerning Court of Claims Act § 11(b), the court finds the claim meets the requirements of that section and therefore denies the motion to dismiss.

The claim, filed on May 17, 2000, alleges as follows:

The nature of the claim: That Queens College, a member of City University of New York, did in its offer of support to Lynford Foreman, make offers which were subsequently breached by the Institution after, with reliance on same, claimant did perform. The failure of Queens College to perform, as promised, resulted in a breach of contract, fraud, deceit [sic] and negligent representation.

In June 1997, it became apparent that Queens College, a member of the City University of New York, would not pay the annual sum of Six Thousand (\$6,000.00) dollars as promised, pursuant to executed 1-20-ID Immigration form in 1996. Claimant entered into negotiation with the finance Department until fall of 1998, when it became clear the Institution did not intended [sic] to honour their contract or reach any reasonable compromise. It was subsequently determine [sic] that the State of New York and the City University was ultimately responsible.

(Claim, paragraphs 2 and 3). In maintaining that the court lacks jurisdiction, defendant does not contend that claimant failed to adequately set forth the claim's nature; only that the lack of a specific date renders the claim insufficient.

Court of Claims Act § 11(b) requires that a claim set forth "the time when and place where such claim arose, the nature of same, and the items of damage or injuries claimed to have been sustained and the total sum claimed." In *Lepkowski v State of New York* (1 NY3d 201 [2003]), the Court of Appeals reiterated the long-standing principle that the purpose of the §11(b) requirements is to "enable the State . . . to investigate the claim[s] promptly and to ascertain its liability under the circumstances" (*id.*, at 207, quoting *Heisler v State of New York*, 78 AD2d 767 [4th dept 1980]; *see also Klos v State of New York*, 19 AD3d 1173 [4th Dept 2005], *Rodriguez v State of New York*, 8 AD3d 647 [2d Dept 2004]).

Where, as here, defendant alleges that the information contained in the claim, or in a notice of intention to file a claim, is insufficient to enable a prompt and thorough investigation, it is incumbent upon defendant to demonstrate that it attempted, unsuccessfully, to investigate based on the information that was provided (*Cannon v State of New York*, 163 Misc 2d 623 [1994]; *Partridge v State of New York*, Ct Cl, Patti, J., Claim No. 90710, Motion No. M-62089 [March, 2001]; *Kerr v State of New York*, Ct Cl, Read, P.J., Claim No. 105574, Motion No. M-65237, [October 2, 2002]; *Turpin v State of New York*, Ct Cl, Read, P.J., Claim No. 92485, Motion No. M-58816 [June 8, 1999]). While the defendant need not go beyond the contents of a claim or notice of intention in order to obtain sufficient information to conduct its investigation, "the substantive information in a claim or notice of intention does not have to provide all of the information the State may need in order to assess its potential liability. Rather there must be enough specific details about the time, location and nature of the claim to enable the State to easily conduct an investigation and, through such investigation, assess its risk of being found liable" (*Gonzalez v State of New York*, Ct Cl, Sise, P.J., Decision and Order dated April 12, 2006, UID No. 2006-028-542).

In *Epps v State of New York* (199 AD2d 914 [1993]), the Third Department had occasion to address the degree of specificity required with respect to the statutory requirement that a claim or notice of intention state the "time when" the claim accrued. Addressing a notice of intention in a negligence claim accruing within the State correctional system, the court held: "[w]here, as here, the alleged negligence was ongoing, and assertedly

involved omissions rather than affirmative acts, the recitation in the notice of the range of dates, along with the three correctional facilities where claimant was treated, is sufficiently specific to permit the State to investigate the claim.”^[3]

Defendant is incorrect in arguing that the claim herein “fails to abide by the mandate of Section 11 of the Court of Claims Act in that the claim does not specify a specific accrual date pertaining to allegations of breach of contract” (Affirmation in Support, ¶ 8). The statute contains no such “mandate”; in fact the word “date” is not mentioned. What the statute requires is that a claim or notice of intention set forth the “time when” the claim accrued. In this context, as held in *Epps*, there are some claims where the precise moment of accrual, indeed the precise date, cannot be ascertained with certainty, and that a “range of dates” can suffice to meet the statutory requirement with sufficient specificity to enable a prompt investigation – the “guiding principle” informing § 11(b) analysis (*Lepkowski, supra*, 1 NY3d 201, 207).

Here, claimant alleged it became apparent in June 1997 that defendant was in breach of the alleged contract. Defendant does not state how this allegation was too vague to enable it to investigate. Defendant’s reliance on *Harper v State of New York* (34 AD2d 865 [1970]) is misplaced. The claims at issue there, unlike the claim here, “did not . . . indicate the time when they arose.” The court finds no merit to the contention that the claim should be dismissed for lack of jurisdiction because claimant did not identify a precise date when the claim allegedly accrued.

Accordingly, the motion is granted to the extent indicated and is otherwise denied. The claim will be scheduled for trial at the earliest available date following the filing of this decision and order.

May 30, 2006
New York, New York

HON. MELVIN L. SCHWEITZER
Judge of the Court of Claims

^[2].The court considered the Notice of Motion, Affirmation in Support and Exhibits, the claimant’s unsworn opposition papers (which played no part in the decision) and the Reply Affirmation.

^[3].Although the *Epps* court noted that the notice of intention “need not meet the more stringent requirements imposed upon” the claim itself, the distinction to which the court was referring was that “a cause of action need not be stated” in a notice of intention. *Schwartzberg v State of New York* (121 Misc 2d 1095). The alleged defect in the claim at issue here does not pertain to whether it states a cause of action, but whether it provided sufficient notice within the meaning of § 11(b), a requirement that is identical for claims and notices of intention.