

State Farm Mut. Auto. Ins. Co. v State of New York
2012 NY Slip Op 33991(U)
September 4, 2012
Court of Claims
Docket Number: Claim No. XXXXX
Judge: Glen T. Bruening
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Synopsis

The Court granted subrogee's motion seeking permission to file a late claim pursuant to Court of Claims Act Section 10 (6).

Case information

UID: 2012-048-064

Claimant(s): STATE FARM MUTUAL AUTOMOBILE INS. CO. A/S/O MARTIN J. LUPPINO

Claimant short name: LUPPINO

Footnote (claimant name) :

Defendant(s): STATE OF NEW YORK

Footnote (defendant name) : The caption has been amended to reflect the proper name of the Defendant.

Third-party claimant(s):

Third-party defendant(s):

Claim number(s): None

Motion number(s): M-81466

Cross-motion number(s):

Judge: GLEN T. BRUENING

Claimant's attorney: HANDELMAN, WITKOWICZ & LEVITSKY, LLP
By: Eric D. Handelman, Esq.
HON. ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

Defendant's attorney: By: Thomas Trace, Esq.
Senior Attorney

Third-party defendant's attorney:

Signature date: September 4, 2012

City: Albany

Comments:

Official citation:

Appellate results:

See also (multcaptioned case)

Decision

Claimant State Farm Mutual Automobile Insurance Company (hereinafter State Farm), as subrogee of its insured Martin J. Luppino, has brought this Motion seeking an order granting it leave to file a late Claim, pursuant to Court of Claims Act § 10 (6), to recover property damages sustained to a 2010 Toyota vehicle owned by its insured and arising out of a one-car automobile accident that took place on August 9, 2011 on Oriskany Street West in the City of Utica, Oneida County. State Farm contends that on that date and at that location, the insured was operating the Toyota vehicle when, due to Defendant's negligence, it struck an unsecured or improperly secured manhole cover causing property damages to the vehicle. Defendant opposes the motion.

In an action to recover damages to property or for personal injuries, Court of Claims Act § 10 (3) requires that a Claim be filed with the Clerk of the Court and served upon the Attorney General within 90 days after the accrual of the Claim unless, within that same time frame, a Notice of Intention to File a Claim is served upon the Attorney General, in which event the Claim shall be filed and served within two years after its accrual. Failure to

timely serve the Attorney General with the Notice of Intention, or to timely file and serve the Claim, divests the Court of subject matter jurisdiction (see Alston v State of New York, 97 NY2d 159, 164 [2001]; Maude V. v New York State Off. of Children & Family Servs., 82 AD3d 1468, 1469 [3d Dept 2011]). However, if a Claimant fails to timely file or serve the Claim, or fails to timely serve the Notice of Intention to File a Claim, he or she may move the Court for permission to file and serve a late Claim, so long as the applicable statute of limitations set forth in Article 2 of the CPLR has not expired (see Court of Claims Act §10 [6]). As is relevant to this action, CPLR § 214 (4) requires that an action to recover damages for injury to property be commenced within three years of the date of the injury. Accordingly, since the Claim is alleged to have accrued on August 9, 2011, State Farm's application for late Claim relief is made within the applicable statute of limitations.

In addressing the substance of State Farm's motion, the Court of Claims is vested with broad discretion to grant or deny a motion that seeks permission to file a late claim (see Langner v State of New York, 65 AD3d 780, 783 [3d Dept 2009]) after consideration of, "among other factors, whether the delay in filing the claim was excusable; whether the state had notice of the essential facts constituting the claim; whether the state had an opportunity to investigate the circumstances underlying the claim; whether the claim appears to be meritorious; whether the failure to file or serve upon the attorney general a timely claim or to serve upon the attorney general a notice of intention resulted in substantial prejudice to the state; and whether the claimant has any other available remedy" (Court of Claims Act § 10 [6]). However, "the presence or absence of any one factor should not be deemed controlling" (Matter of Martinez v State of New York, 62 AD3d 1225, 1226 [3d Dept 2009] [internal quotation marks and citation omitted]).

With respect to the excusable delay factor in Court of Claims Act § 10 (6), State Farm contends that the delay in filing its Claim was due to its understanding, however erroneous, that it should be dealing directly with the New York State Department of Transportation (hereafter DOT) in seeking damages for the loss. State Farm asserts that it submitted a claim for damages to the DOT and that, by correspondence dated January 11, 2012, the DOT denied the claim after an investigation (see Affirmation of Eric D. Handelman, Esq., Exhibit B). In opposition, Defendant argues that Claimant has not established a sufficient excuse. Ignorance of the law is not an acceptable explanation for Claimant's delay in timely serving a notice of intention or timely filing and serving a Claim (see Matter of Sandlin v State of New York, 294 AD2d 723, 724 [2002], lv dismissed 99 NY2d 589 [2003]). Furthermore, communication between the DOT and a potential Claimant does not establish a justifiable excuse for delay in filing a Claim (see e.g. Prusack v State of New York, 117 AD2d 729, 730 [2d Dept 1986]). While not a bar to Claimant's application, the excusable delay factor does not weigh in Claimant's favor.

With respect to the Section 10 (6) factors of notice of essential facts, opportunity to investigate, and substantial prejudice to the State, State Farm asserts that the State had notice of the essential facts constituting the Claim based on the DOT's investigation of the incident and will not suffer prejudice from a late filing. The submissions before the Court establish that the DOT had notice of the accident by October 10, 2011 (see Affirmation of Eric D. Handelman, Esq., Exhibit B), and was able to conduct an investigation of the accident. Thus, the Court concludes that Defendant had notice of the essential facts of the Claim and an opportunity to investigate so that Defendant will not suffer prejudice from the filing of a late Claim. Accordingly, the Court weighs these factors in State Farm's favor. Similarly, State Farm states that it has no other remedy available, and Defendant does not dispute this. Accordingly, the Court weighs this factor in State Farm's favor.

While the final factor applicable to Claimant's motion - the appearance of merit - may arguably be the most crucial factor in Section 10 (6) (see Matter of Martinez v State of New York, 62 AD3d at 1226), it does not require State Farm to definitively establish the merits of the proposed Claim. Rather, State Farm needs to establish that the proposed Claim is not "patently groundless, frivolous or legally defective, and the record as a whole must give reasonable cause to believe that a valid cause of action exists" (Sands v State of New York, 49 AD3d 444, 444 [1st Dept 2008]). To hold the State liable based on a breach of its duty to maintain its roadways in a reasonably safe condition (see Grevelding v State of New York, 91 AD3d 1309, 1310 [4th Dept 2012], lv denied 94 AD3d 1482 [4th Dept 2012]), a Claimant must demonstrate that Defendant created a dangerous condition or that Defendant failed to diligently remedy a dangerous condition once it was provided with actual or constructive notice (see Quintanilla v State of New York, 94 AD3d 846, 847 [2nd Dept 2012]). Furthermore, no liability will attach unless Defendant's negligence is a proximate cause of the accident (see Johnson v State of New York, 27 AD3d 1061, 1062 [4th Dept 2006], lv denied 7 NY3d 711 [2006]).

In support of its assertion that the proposed Claim has the appearance of merit, State Farm submits the affidavit of its subrogor - Martin J. Luppino - who attests that, while driving the Toyota vehicle on the date of the accident, the vehicle struck "an unsecured or improperly secured manhole cover...[that appeared to be] sticking up in the air" (Affidavit of Martin J. Luppino, paragraph 7). The January 11, 2012 correspondence from the DOT to State

Farm states that DOT's field personnel "informed us that a broken manhole cover at the accident location was replaced a day earlier in accordance with standard operating procedures" (Affirmation of Eric D. Handelman, Esq., Exhibit B). Thus, State Farm asserts that "[g]iven that the DOT acknowledges performing work to that manhole cover, there is good evidence to suggest that the DOT improperly performed such work" (Affirmation of Eric D. Handelman, Esq., paragraph 21). In opposition, Defendant asserts that because the proposed Claim does not allege what the State did to cause the alleged condition or that it had notice of the alleged condition, the proposed Claim fails to meet the strict pleading requirements of Court of Claims Act § 11 (b) and lacks the appearance of merit. Defendant offers the affidavit of Eric O. Smith, a principal engineering technician with the DOT, who was conducting a drainage elevation survey in the area of the accident on August 8, 2011. Mr. Smith attests that, on that date, he replaced a broken manhole cover that was located in the vicinity of the accident with an intact manhole cover taken from a nearby parking lot. Mr. Smith states that the manhole cover used to replace the broken manhole cover on the roadway was intact when he left the vicinity on August 8, 2011 at approximately 2:30 P.M. (see Affidavit of Eric O. Smith). In a reply, State Farm asserts that Defendant had sufficient information about and an opportunity to investigate the incident as evidenced by the DOT's investigation and the Affidavit of Eric O. Smith. State Farm also submits an amended proposed Claim which specifically recites that the State had actual or constructive notice of the alleged dangerous condition and that Defendant's negligence was the proximate cause of the damages sustained (see attachment to the Reply Affirmation of Eric D. Handelman, Esq.).

As the allegations set forth in the proposed Claim set forth "the time when and place where such claim arose, the nature of same, the items of damage or injuries claimed to have been sustained and . . . the total sum claimed" (Court of Claims Act ¶ 11 [b]), the Court finds that the proposed Claim satisfies Court of Claims Act § 11(b), is not patently without merit and, in accepting the allegations as true, provides reasonable cause at this stage of the litigation to believe that a cause of action for property damage may exist. Similarly, the Court finds that the amended proposed Claim satisfies Court of Claims Act § 11 (b).

Based upon the foregoing and having considered the statutory factors enumerated in Court of Claims Act § 10 (6), the Court grants State Farm's Motion No. M-81466 to late file its amended proposed Claim pursuant to Court of Claims Act § 10 (6). Accordingly, within sixty (60) days of the date of filing of this Decision and Order, State Farm shall file with the Clerk of the Court its amended proposed Claim against the State and serve a copy of the amended proposed Claim upon the Attorney General personally or by certified mail, return receipt requested. In serving and filing the Claim, State Farm is directed to follow all of the requirements of the Court of Claims Act and the Uniform Rules for the Court of Claims.

September 4, 2012

Albany, New York

GLEN T. BRUENING

Judge of the Court of Claims

The following papers were read and considered by the Court:

Notice of Motion, filed April 27, 2012;

Affidavit of Martin J. Luppino, sworn to on April 18, 2012, with attached MV-104A report;

Affirmation of Eric D. Handelman, Esq., dated April 25, 2012, with Exhibits A-C;

Affirmation of Thomas Trace, Esq., filed June 5, 2012, with Exhibit A (consisting of the Affidavit of Eric O. Smith, sworn to on June 5, 2012);

Reply Affirmation of Eric D. Handelman, dated June 7, 2012, with attached amended proposed Claim.

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