

Doe v State of New York
2013 NY Slip Op 34260(U)
December 19, 2013
Court of Claims
Docket Number: Claim No. XXXXX
Judge: Glen T. Bruening
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DOE v. THE STATE OF NEW YORK, # 2013-048-125, Claim No. None, Motion No. M-83594

Synopsis

The Court denied Claimant's motion seeking late Claim relief, finding that the causes of action alleging intentional torts were untimely, and based on Claimant's failure to comply with Court of Claims Act § 11(b), as incorporated in Section 10 (6).

Case information

UID: 2013-048-125

Claimant(s): JANE DOE

Claimant short
name: DOE

Footnote (claimant name) : The Decision and Order has been amended for publication purposes in accordance with Civil Rights Law § 50-b (1), and Claimant is referred to as "Jane Doe."

Defendant(s): THE STATE OF NEW YORK

Footnote (defendant name) : The Court has, sua sponte, amended the caption to reflect the State of New York as the only proper Defendant.

Third-party
claimant(s):

Third-party
defendant(s):

Claim number(s): None

Motion number(s): M-83594

Cross-motion
number(s):

Judge: GLEN T. BRUENING

Claimant's
attorney: Jane Doe, Pro Se

Defendant's
attorney: HON. ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
By: Thomas Trace, Esq.
Senior Attorney

Third-party
defendant's
attorney:

Signature date: December 19, 2013

City: Albany

Comments:

Official citation:

Appellate results:

See also
(multicaptioned
case)

Decision

On June 20, 2013, Jane Doe filed a motion for late Claim relief pursuant to Court of Claims Act § 10 (6). Attached to the Notice of Motion is a proposed Claim alleging, among other things, a cause of action sounding in intentional tort, resulting in personal injuries sustained by Claimant, while she was a rehabilitation patient at the

St. Lawrence Psychiatric Center (Center), located in Ogdensburg, New York. The proposed Claim alleges that Claimant left her house sometime in November 2010 and thereafter arrived at the Center. After her arrival, Claimant alleges that she was forced by her roommate to engage in a sex act and subsequently, over the course of four to six weeks, was approached by two unidentified males who made threatening and sexually suggestive comments to Claimant, which culminated in Claimant being forced to engage in oral sex in an incident involving both of those men and a third unidentified man. Claimant alleges that she was transferred to another room after advising a nurse about the situation with her roommate, and that she also advised a nurse of the sexually suggestive and threatening comments before she was sexually abused the second time.

Defendant opposes Claimant's motion, contending, among other things, that the proposed Claim fails to meet the strict pleading requirements of Court of Claims Act § 11 (b), in that the time frame of the events is ambiguous and the proposed Claim fails to set forth any identifying information regarding the individuals involved.

Whether characterized as a Claim for an intentional tort or an unintentional tort, Court of Claims Act § 11 (a) (i) mandates that a copy of the Claim be served personally or by certified mail, return receipt requested, upon the Attorney General within the applicable time period provided in section 10 of the Court of Claims Act.

Court of Claims Act § 10 (3) mandates that

[a] claim to recover damages for injuries to property or for personal injuries caused by the negligence or unintentional tort of an officer or employee of the state while acting as such officer or employee, shall be filed and served upon the attorney general within ninety days after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after the accrual of such claim.

Court of Claims Act § 10 (3-b) mandates that

[a] claim to recover damages for injuries to property or for personal injuries caused by the intentional tort of an officer or employee of the state while acting as such officer or employee . . . shall be filed and served upon the attorney general within ninety days after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within one year after the accrual of such claim.

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, 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]).

In liberally construing the proposed Claim, Claimant seeks damages as a result of the intentional torts of assault and battery, which are subject to a one-year statute of limitations (see CPLR 215 [3]), a violation of Penal Law § 130.50 (criminal sexual act in the first degree), which is subject to a five year statute of limitations against the perpetrator of the crime (see CPLR 213-c; Alexander, Practice Commentaries, McKinney's Consol Laws of NY, CPLR 213-c), and negligence in failing to protect Claimant, which is subject to a three-year statute of limitations (see CPLR 214 [5]). The proposed Claim asserts only that Claimant was sexually assaulted initially by her roommate "[a]fter arrival at the rehab" (proposed Claim, ¶ 5), and that she was subjected to sexually suggestive comments from two men for approximately four to six weeks before she was sexually assaulted and/or abused on the second occasion. Based on these allegations, the Court is unable to conclusively determine when the claims accrued for statute of limitations purposes, and is only able to conclude that the acts complained of occurred after Claimant entered rehabilitation and before the instant motion was filed. If the Court were to assume that the proposed Claim alleges an intentional assault based upon the incident with her roommate occurring in November 2010, and that the subsequent threatening conversations, occurring four to six weeks later with the two men, also allege assault or some other intentional tort, the Court lacks the discretion to grant late Claim relief with respect to these causes of action. However, to the extent that the proposed Claim can be read to assert a cause of action for negligence based on Defendant's failure to protect Claimant, and for a sexual offense as set forth in CPLR 213-c, Claimant's application for late claim relief is timely.

In addressing the substance of Claimant's motion with respect to the negligence and sexual offense claims, Court of Claims Act § 10 (6) requires that a motion for late claim relief be accompanied by "[t]he claim proposed to be filed, containing all of the information set forth in section eleven of this act." Court of Claims Act § 11 (b) requires, in relevant part, that "[t]he claim [] state 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, except in an action to recover damages for personal injury, medical, dental or podiatric malpractice or wrongful death, the total sum claimed." Section 11 (b) also requires that the same information be set forth in a Notice of Intention, excepting the items of damage or injuries. All of the requirements in section 11 (b) are "substantive conditions upon the State's waiver of sovereign immunity" (Lepkowski v State of New York, 1 NY3d 201, 207 [2003]), and a claimant's failure to comply with those statutory provisions renders the Claim jurisdictionally defective (see Kolnacki v State of New York, 8 NY3d 277, 280-281 [2007]).

Assuming that a proposed Claim containing all of the information set forth in the Court of Claims Act § 11 is submitted with the 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 others, six factors, including

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]).

Prior to consideration of the six factors listed in the Court of Claims Act § 10 (6), in the interest of judicial economy, the Court will first determine whether the proposed Claim is sufficiently specific to comply with the pleading requirements of section 11 (b), since those requirements implicate this Court's subject matter jurisdiction. The "guiding principle" of section 11 (b) is "to enable the State . . . to investigate the claim[s] promptly and to ascertain its liability under the circumstances" (Lepkowski v State of New York, 1 NY3d at 207 [internal quotation marks and citations omitted]). Along these lines, Defendant is not required "to ferret out or assemble information that section 11(b) obligates the [c]laimant to allege" in the proposed Claim (Lepkowski v State of New York, 1 NY3d at 208).

The proposed Claim alleges that the assaults and/or sexual offenses occurred sometime after Claimant arrived at the Center in November 2010. Claimant does not identify the date, or even the month, she was assaulted the first time, and the Court is left to assume that the second assault and/or sexual offense occurred four to six weeks later. Apart from identifying two of the men involved in the second assault and/or sexual offense as either the shorter man or the taller man (see proposed Claim, ¶ 6), Claimant fails to provide any identifying information regarding the individuals involved, or whether those individuals were either Defendant's employees or residents of the Center. Other than indicating that she advised a nurse, there is no identifying information about the person Claimant is alleged to have told of the first assault or the sexually suggestive comments made prior to the second assault and/or sexual offense. This, coupled with the vagueness of the time frame when the acts occurred, and the lack of identifying information regarding the perpetrators of the acts, renders the proposed Claim insufficient to satisfy the requirements of Court of Claims Act § 11 (b), as incorporated in section 10 (6), as it fails in its primary purpose to enable Defendant to conduct a meaningful investigation (see e.g. Morra v State of New York, 107 AD3d 1115, 1116 [3d Dept 2013], Robin BB. v State of New York, 56 AD3d 932, 933 [3d Dept 2008]). Insofar as Claimant's failure to attach a proposed Claim containing all of the information required by Court of Claims Act § 11 warrants the denial of her motion, the Court does not reach the merits of the six statutory factors enumerated in Court of Claims Act § 10 (6).

Accordingly, Claimant's Motion No. M-83594 is denied.

December 19, 2013

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 June 20, 2013;

Proposed Claim, dated June 7, 2013;

Affirmation of Thomas Trace, Esq., dated August 22, 2013.

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