Cadore v State of New York
2021 NY Slip Op 33672(U)
January 15, 2021
Court of Claims
Docket Number: Claim No. 129681
Judge: Richard E. Sise
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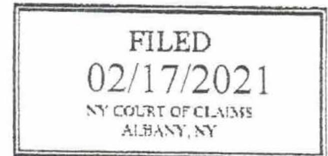


STATE OF NEW YORK **COURT OF CLAIMS**

JOHN D. CADORE,

Claimant,

DECISION AND ORDER

-V-

THE STATE OF NEW YORK,

Claim No. 129681
Motion No. M-96230

Defendant.

BEFORE: **HON. RICHARD E. SISE**
Acting Presiding Judge of the Court of Claims

APPEARANCES:

For Claimant:
JOHN D. CADORE, PRO SE

For Defendant:
HON. LETITIA JAMES, ATTORNEY GENERAL
BY: Douglas H. Squire, Esq.
Assistant Attorney General

The following papers were read on Claimant's motion to reargue and renew a prior decision of the court dismissing the claim:

1. Notice of Motion dated November 27, 2020;
2. Affidavit of John D. Cadore dated November 27, 2020 in support of the motion to renew;
3. Affidavit of John D. Cadore dated November 27, 2020 in support of the motion to reargue;
4. Exhibits 1-7 attached to the November 27, 2020 affidavits of John D. Cadore;
5. Affirmation of Douglas H. Squire affirmed December 31, 2020 with Exhibits A-B annexed.

Filed papers: Claim, Answer

Claimant, an attorney, has moved to reargue and renew a decision of the court dismissing the action on the ground that the claim was not timely filed (*Cadore v State of New York*, Claim

No. 129681, M-95448, Court of Claims, September 23, 2020, Sise, A.P.J.). The claim alleges causes of action for defamation and breach of contract.

A "'motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and is properly granted upon a showing that the court overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier decision'" (*Loris v S & W Realty Corp.*, 16 AD3d 729, 730 [3d Dept 2005] quoting, *Peak v Northway Travel Trailers Inc.*, 260 AD2d 840, 842 [3d Dept 1999]). In support of the motion to reargue claimant contends that the court incorrectly decided that the claim was untimely because the actions of defendant, which underlie the claim, constitute a continuous course of conduct and because the single publication rule should not be applied here. The same arguments were made in opposing the motion to dismiss and were rejected for reasons made clear in the prior decision. A motion to reargue is not designed to afford an unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted (*Mayer v Natl. Arts Club*, 192 AD2d 863, 865 [3d Dept 1993]). As claimant has not satisfied the standard for reargument, the motion should be denied.

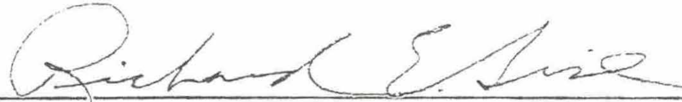
A motion to renew is based upon newly discovered material facts or evidence which existed at the time the prior motion was made, but were unknown to the party seeking renewal, together with a valid excuse as to why the new information was not previously submitted (CPLR 2221 [e]; *Carota v Wu*, 284 AD2d 614, 617 [3d Dept 2001]). The only new evidence offered here, which bears on the question of the timeliness of the claim, is a copy of a document served on the Attorney General in January 2017 which claimant maintains constitutes a notice of intention to file a claim. Although it is questionable as to whether the document satisfies the

requirements of a notice of intention because it does not state the time when and place where the claim arose, the items of damage or the total sum claimed (Court of Claims Act § 11 [b]), the existence of the document was known to claimant at the time the prior motion was made and therefore, will not support a motion to renew. Moreover, even if the document qualified as a notice of intention, it would not have the effect of rendering the claim timely. As noted in the prior decision, the most recent date for any event alleged in the claim is March 14, 2016 and, because the date of accrual must be conveyed in the claim (Court of Claims Act § 11 [b]), March 14, 2016 sets the outside date for the accrual of any possible claim. For a notice of intention to extend the time for serving and filing a claim, the notice of intention must be served, as is relevant here, within 90 days of accrual, for intentional torts such as defamation (Court of Claims Act § 10 [3-b]), or six months of accrual, for breach of contract claims (Court of Claims Act § 10 [4]). The March 14, 2016 date of accrual, however, is more than six months prior to January 2017 when the asserted notice of intention was served. Inasmuch as the document was not served within any relevant time period, if determined to constitute a notice of intention, it would not extend the time for filing the claim so as to render it timely (Court of Claims Act § 10 [3-b], [4]).

Accordingly, it is

ORDERED, that the motion is denied.

Albany, New York
January 15, 2021



RICHARD E. SISE
Acting Presiding Judge of the Court of Claims