

Wright v State of New York

2022 NY Slip Op 34968(U)

April 5, 2022

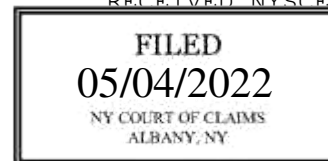
Court of Claims

Docket Number: Claim No. 136589

Judge: Catherine E. Leahy-Scott

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STATE OF NEW YORK COURT OF CLAIMS

CHI BARTRAM WRIGHT,

Claimant,

**DECISION AND
ORDER**

-v-

STATE OF NEW YORK¹,

Claim No. 136589

Motion No. M-97641

Defendant.

BEFORE: HON. CATHERINE E. LEAHY-SCOTT
Judge of the Court of Claims

APPEARANCES: For Claimant:
Belluck & Fox, LLP
By: Kristina M. Georgiou, Esq.

For Defendant:
Letitia James, New York State Attorney General
By: Christina Calabrese, Esq., Assistant Attorney
General

On July 13, 2021, Claimant filed this Claim pursuant to the Child Victims Act revival statute to recover damages for alleged sexual misconduct perpetrated at “‘The Egg’ /The Governor Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation” (Affirmation of Christina Calabrese, Esq., Assistant Attorney General [Calabrese Aff], Ex A [Claim] ¶ 3). Specifically, Claimant asserts he “was raped and sexually abused as a child by numerous men in multiple incidents between 1986 and 1990” (*id.*). The Claim alleges that Claimant’s abusers were “both employees of the State as well as members of the general public” and the acts of sexual abuse

¹ The caption is amended sua sponte to reflect the State of New York as the only proper Defendant.

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occurred “in the bathrooms, stairwells, tunnels, boiler room, and Kitty Carlisle Hart Theater” (id. ¶ 4). Issue was joined on August 26, 2021.

Defendant now moves to dismiss the Claim arguing, among other things, that the Court lacks subject matter jurisdiction over the Claim because it fails to satisfy the pleading requirements of Court of Claims Act § 11 (b) (see e.g. Calabrese Aff ¶ 6). In opposition, Claimant contends the Claim contains sufficient factual allegations to satisfy Court of Claims Act § 11 (b) (see Affirmation of Kristina M. Georgiou, Esq. [Georgiou Aff] ¶¶ 14-20). Additionally, Claimant, relying upon Matter of M.C. v State of New York (74 Misc 3d 682 [Ct Cl 2022] [reproduced at Georgiou Aff, Ex A]), argues that the Claim should not be dismissed because Defendant “has not demonstrated that an investigation is impractical based upon the facts in the Claim” (Georgiou Aff ¶ 20).

“The State’s waiver of immunity from suits for money damages is not absolute, but rather is contingent upon a claimant’s compliance with specific conditions placed on the waiver by the Legislature” (Lepkowski v State of New York, 1 NY3d 201, 206 [2003]; see Court of Claims Act § 8; Alston v State of New York, 97 NY2d 159, 163 [2001]). Specifically, the State’s waiver of immunity ““is conditioned upon a claimant’s compliance with the limitations set forth in article 2 of the Court of Claims Act, which includes section 11 (b)”” (Moreland v State of New York, 200 A3d 1362, 1363-1364 [3d Dept 2021], quoting Weaver v State of New York, 82 AD3d 878, 879 [2d Dept 2011], lv dismissed 17 NY3d 778 [2011], lv denied 19 NY3d 804 [2012]). Moreover, “[b]ecause suits against the State are allowed only by the State’s waiver of sovereign immunity and in derogation of the common law, statutory requirements conditioning suit must be strictly construed” (Matter of New York City Asbestos Litig., 24 NY3d 275, 281 [2014] [internal quotation marks and citations omitted]). “Although it may be difficult to comply with the terms of [Court of

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Claims Act § 11 (b)], it is for the Legislature to set and modify those terms, not this Court” (Moreland, 200 AD3d at 1364).

“[S]ection 11(b) places five specific substantive conditions upon the State’s waiver of sovereign immunity by requiring the claim to specify (1) ‘the nature of [the claim]’; (2) ‘the time when’ it arose; (3) the ‘place where’ it arose; (4) ‘the items of damage or injuries claimed to have been sustained’; and (5) ‘the total sum claimed’” (Lepkowski, 1 NY3d at 207; see Kolnacki v State of New York, 8 NY3d 277, 280 [2007], rearg denied 8 NY3d 994 [2007]). “Although absolute exactness is not required, the claim must provide a sufficiently detailed description of the particulars of the claim to enable [the defendant] to investigate and promptly ascertain the existence and extent of its liability” (Morra v State of New York, 107 AD3d 1115, 1115-1116 [3d Dept 2013] [internal quotation marks and citation omitted]; see Lepkowski, 1 NY3d at 207). “[T]he State is not required to go beyond a claim or notice of intention in order to investigate an occurrence or ascertain information which should be provided pursuant to Court of Claims Act § 11” (Matter of DeMairo v State of New York, 172 AD3d 856, 857 [2d Dept 2019] [internal quotation marks and citation omitted]). The failure to comply with the pleading requirements of Court of Claims Act § 11 (b) is a jurisdictional defect mandating dismissal of the Claim (see Lepkowski, 1 NY3d at 209).

“To adequately plead when the claim arose, the claimant must allege the date of the tort or other claim, as the case may be, with sufficient definiteness to enable the State to investigate the claim promptly and ascertain its potential liability” (Matter of Geneva Foundry Litig., 173 AD3d 1812, 1813 [4th Dept 2019]). Thus, “[i]f the claimant fails to specify the dates relevant to the elements of the claim or provides only a broad range of dates, the claim is jurisdictionally defective and properly dismissed” (id. at 1813-1814).

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For example, in claims alleging negligent hiring, supervision, training, and/or retention of a State employee who committed acts of sexual assault against a claimant, courts have held that the failure to plead the specific date(s) when the assault(s) occurred violates Court of Claims Act § 11(b) and mandates dismissal of the Claim (see e.g. Robin BB. v State of New York, 56 AD3d 932, 933 [3d Dept 2008] [allegation that a State employee “engaged in numerous acts of sexual misconduct at various locations in St. Lawrence County over the course of an eight-year period” was insufficient to satisfy Court of Claims Act § 11 (b)]; C.B. & R.B. v State of New York, UID No. 2020-040-019 [Ct Cl, McCarthy, J., Apr. 29, 2020] [allegation that the movant was sexually assaulted at Marcy Correctional Facility “on multiple occasions in and around the month of July 2018 continuing until on or about September 8, 2018” failed to comply with Court of Claims Act § 11 (b)]; D.G. v State of New York, Claim No. 125975, Motion Nos. M-92928, CM-93574, [Ct Cl, Lopez-Summa, J., Oct. 7, 2019] [holding the claimant’s allegation that she was sexually assaulted “during the period of June 5, 2013 through and including September 16, 2013” at Sagamore Psychiatric Center did not satisfy Court of Claims Act § 11 (b)]; C.C. v State of New York, UID No. 2016-051-011 [Ct Cl, Martin, J., Apr. 26, 2016] [“general allegations of numerous acts of sexual misconduct at unnamed locations over the course of four months do not meet the pleading requirements of section 11 (b)”]; Doe v State of New York, UID No. 2013-048-125 [Ct Cl, Bruening, J., Dec. 19, 2013] [“(t)he proposed Claim alleges that the assaults and/or sexual offenses occurred sometime after (the) Claimant arrived at the (state psychiatric center) in November 2010. (The) (c)laimant 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 [before the claimant left the psychiatric center]”). Although these cases were not commenced pursuant to the Child Victims Act revival

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statute, the Fourth Department has specified that “[t]he case law that has developed in non-Child Victims Act cases applies equally to Child Victims Act cases” (PB-7 Doe v Amherst Cent. Sch. Dist., 196 AD3d 9, 12 [4th Dept 2021], quoting Doe v MacFarland, 66 Misc 3d 604, 614, [Sup Ct, Rockland County 2019]).

Here, the Claim alleges that Claimant was sexually abused by various unidentified individuals at various locations within the Egg/Empire State Plaza over the course of five years. Claimant does not provide any details as to when the assaults began, or any date(s) when said assaults occurred (see Robin BB., 56 AD3d at 933; Doe, UID No. 2013-048-125; see also Morra, 107 AD3d at 116 [generally alleging the claim arose during a two-year time period fails to satisfy pleadings requirements of Court of Claims Act § 11 (b)]; compare Myers v State of New York, UID No. 2019-015-177 [Ct Cl, Collins, J., Aug. 7, 2019] [claim alleging multiple sexual assaults during a one-month period was sufficiently specific to meet the requirements of Court of Claims Act § 11 (b)]). Claimant’s failure to set forth any specific date(s) of the alleged abuse violates Court of Claims Act § 11 (b) and mandates dismissal of this Claim.

The holding in Matter of M.C. does not mandate a contrary result. In that case, the court held the claimant satisfied the “time when” requirement of section 11 (b) “by providing a specific date range of less than a year with an end date” (Matter of M.C., 74 Misc 3d at 692). Specifically, the claim alleged the assailant abused the claimant “on multiple occasions ‘in or about December of 1966 . . . through on or about October 8, 1967’” (id. at 688). Matter of M.C. is distinguishable from the instant case as the alleged abuse covers a period longer than one year and Claimant has not provided any specific date(s), or even month(s), when the alleged assault(s) occurred. Stated

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differently, the time period in Matter of M.C. was clearly defined where, as here, the allegations cover some undefined period encompassing five years.

Moreover, to the extent Claimant relies upon Matter of M.C. for the proposition that the State must demonstrate it is unable to conduct an investigation into the factual allegations of the Claim before the Claim can be dismissed for failure to comply with Court of Claims Act § 11 (b), said argument is misguided. In Matter of M.C., the court relied upon Smith v State of New York (UID No. 2006-009-079 [Ct Cl, Midey, Jr., J., Dec. 22, 2006]), where the court held “[w]hen a defendant contends that a claim falls short of this standard, it is incumbent upon the defendant to demonstrate that it was unable to conduct an investigation based upon the information that was provided” (id.). Smith involved a correctional facility’s failure to diagnose and treat an incarcerated individual’s medical condition. In Smith, the Court held the requirements of Court of Claims Act § 11 (b) are satisfied if “[the] claimant has provided a range of dates together with the names of the correctional facilities where claimant was treated, and has also alleged that acts or omissions of the defendant have caused claimant to suffer [injuries]” (Smith, UID No. 2006-009-079). Before the decision in Matter of M.C., courts rejected arguments seeking to extend this analysis set forth in Smith to claims of negligence premised upon assaultive conduct. Indeed, as one Court recognized “allegations of medical malpractice occurring during a patient’s confinement in a hospital are substantially different, and more easily investigated, than allegations of negligence relating to allowing intentionally assaultive conduct by a third party” (W.W. v State of New York, UID No. 2008-038-585 [Ct Cl, DeBow, J., Feb. 29, 2008]; see also C.B. & R.B., UID No. 2020-040-019 [the issue of whether a range of dates satisfies the pleading requirements of Court of Claims Act § 11(b) is not as settled as Movant’s counsel has asserted. As Movant has not asserted specific dates as to when the rapes

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occurred, the Court finds that the proposed Claim fails to meet the requirement of Court of Claims Act § 11(b)). Thus, it appears the analysis in Smith that was adopted by the court in Matter of M.C. is arguably not relevant or applicable to claims of negligence premised upon acts of sexual assault.

In any event, the notion that the State must demonstrate it cannot conduct an investigation of the claim based upon the facts presented before moving to dismiss pursuant to Court of Claims § 11 (b) has been specifically rejected in cases decided after Smith. Specifically, in Wilson v State of New York (61 AD3d 1367 [4th Dept 2009]), the Fourth Department held ““a lack of prejudice to the State is an immaterial factor”” in deciding a motion to dismiss for failure to satisfy the strict pleading requirements of Court of Claims Act § 11 (b) (id. at 1368, quoting Byrne v State of New York, 104 AD2d 782, 784 [2d Dept 1984], lv denied 64 NY2d 607 [1985]). Moreover, in Yanus v State of New York (35 Misc 3d 361 [Ct Cl 2011]), the court dismissed a claim for failing to comply with Court of Claims Act § 11 (b), even though Defendant conceded that the State’s ability to investigate the claim was not impaired by the insufficient pleading (see id. at 366). Recognizing the Fourth Department’s holding in Wilson, the Court in Yanus determined “a lack of prejudice to the State is an immaterial factor in considering the requirements of section 11 (b) of the Court of Claims Act” and dismissed the Claim (id. [internal quotation marks and citation omitted]). Thus, more recent authority is clear: “[l]ack of prejudice does not replace lack of compliance with the jurisdictional requirements of the Court of Claims Act” (see Kanof v State of New York, UID No. 2017-029-081 [Ct Cl, Mignano, J., Nov. 21, 2017]). “[A]bsent legislative change, this court is without power to dispense with applicable jurisdictional requirements of law based upon its own concepts of justice” (Byrne, 104 AD2d at 784).

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In sum, Claimant's failure to set forth any specific date(s) of the alleged abuse in the Claim violates Court of Claims Act § 11 (b). Consequently, the Claim must be dismissed.

Accordingly, it is hereby:

ORDERED Motion No. M-97641 is GRANTED and Claim No. 136589 is DISMISSED.

Albany, New York
April 5, 2022



CATHERINE E. LEAHY-SCOTT
Judge of the Court of Claims

The Court considered the following papers in deciding this motion:

- (1) Notice of Motion, dated December 8, 2021.
- (2) Affirmation of Christina Calabrese, Esq., Assistant Attorney General, in Support of Motion dated December 8, 2021, with attachments.
- (3) Affirmation of Kristina M. Georgiou, Esq, in Opposition to Motion, dated February 16, 2022 with attachment.