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THE COURT: Lopez and Encino.

MR. THYME: Good morning, your Honor. Derek Thyme specially appearing on behalf of Earl Sherwood for the plaintiff.

MS. JONES: Good morning, your Honor. Jaclyn Jones appearing on behalf of the defendant City of Encino.

THE COURT: Good morning to each of you. I don't have a tentative ruling to share with you. So did you wish to argue?

MR. THYME: Yes, your Honor. Are you inclined to rule in favor of the plaintiff --

THE COURT: If I knew that I'd have a tentative ruling.

MR. THYME: Thank you, your Honor.

The City is arguing their position that they've been prejudiced by the 20-day late notice, and they actually received notice of the incident twice, once on the very day of the incident and then again 20-day late notice.

The reason for the claim statute is so that they can take care of the problem, prevent further injury in case there's danger to the public. They took subsequent remedial measures right after the incident was reported and fixed the problems.

1 The ability to investigate is another reason²
2 for the claim statute, and they had ample opportunity
3 to investigate. In fact, the investigation was
4 started at the very first day with the security
5 officer filing an incident report and starting the
6 investigation day one.

7 THE COURT: Do you know when those repairs
8 were made?

9 MR. THYME: Not off the top of my head. I
10 believe I have that fact here. Ms. Jones may know
11 the precise date.

12 MS. JONES: I know only based on what was
13 filed by the petitioner.

14 THE COURT: Can you tell me was it done
15 within six months?

16 MR. THYME: That's my recollection, your
17 Honor, but I want to confirm that for certain.

18 Your Honor, I don't think I have the exact
19 repair date. I don't know if it was within the first
20 six-month period.

21 THE COURT: All right. I'm sorry, to get
22 you off track.

23 MR. THYME: No problem, your Honor.

24 The other -- so they had ample time to
25 investigate starting day one with the incident
26 report. They did take those remedial measures and
27 fix the problem.

28 The ability to settle the claim early has

1 been ongoing since day one, really, and the 16-day
2 late notice was not the fault of the plaintiff, it
3 was the fault entirely of plaintiff's counsel. And
4 to deny this petition would substantially prejudice
5 the plaintiff, whereas it wouldn't really
6 substantially be a detriment to the City because they
7 really did have ample opportunity to both investigate
8 the problem, fix the problem and to settle the claim
9 if they so desired. The 16-day late notice period
10 really didn't prejudice the City, but it would
11 substantially prejudice the plaintiff.

12 THE COURT: All right. Ms. Jones.

13 MS. JONES: Your Honor, I would begin by
14 noting that it's not the City's burden to prove
15 prejudice until the petitioner has met their burden
16 to show an excusable mistake has been made.

17 It's the City's position that the error here
18 is inexcusable. I calendaring error in some
19 circumstances may constitute excusable error.
20 However, the petitioner must do more than simply
21 allege that a calendaring error occurred. In this
22 case, we don't know who committed the error, whether
23 it was the attorney himself, a member of his staff,
24 the computer program he was using, when the error
25 occurred --

26 THE COURT: Would it make a difference?

27 MS. JONES: It would, your Honor, in that
28 case law holds that an attorney can't simply allege a

1 calendaring error to justify relief. There has to be
2 some explanation of that error.

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4 (Other unrelated matters reported but not
5 transcribed herein.)

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7 MR. THYME: Yeah, I don't have additional
8 information on that. I mean, I could certainly
9 provide supplemental declarations from Earl Sherwood
10 to that point, but I don't have additional
11 information here today.

12 THE COURT: All right. Is there something
13 else that you want me to know?

14 MR. THYME: No, your Honor. Thank you.

15 THE COURT: Something else that you'd like
16 me to know?

17 MS. JONES: Your Honor, I would only note
18 that section 911.4 of the Government Code requires
19 that the application for leave be filed with the City
20 in a reasonable time not to exceed one year.

21 That the petitioner's application that we're
22 talking about filed in December was made less than a
23 week before that year was to expire, and that is --
24 it's arguable whether that was reasonable.

25 The late claim was filed in July. It was
26 returned by the City within three days, and there's a
27 six-month window of delay. After the application was
28 denied, 15 days after it was filed, the petitioner's

1 firm waited another five months to petition the
2 Court.

3 And it's because of those prolonged delays
4 that the City argues this is inexcusable error
5 because subsequent diligence was not shown. And
6 because of that, the City is now suffering prejudice
7 because of that prolonged timeline. For that reason,
8 we argue the petition should be denied.

9 THE COURT: All right. Anything further?

10 MS. JONES: No, your Honor.

11 MR. THYME: No, your Honor. Thank you.

12 THE COURT: It's under submission. Thank
13 you very much.

14 MR. THYME: Thank you, your Honor.

15 MS. JONES: Thank you, your Honor.

16 (Proceedings concluded.)

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