

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VICTORIA LOCASCIO,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 05-cv-3033
	:	
UNITED STATES POSTAL SERVICE,	:	
	:	
Defendant.	:	

MEMORANDUM

Green, S.J.

October 31, 2005

Presently pending is Defendant’s Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Plaintiff’s response thereto. For the reasons set forth below, Defendant’s Motion for Summary Judgment will be granted in its entirety.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Complaint against United States Postal Service (“USPS”) requesting that Defendant pay her insurance claim for contents missing from one of her packages sent through Defendant’s mail service. On May 22, 2004, Plaintiff sent five boxes, all insured for \$3,000 each, through USPS mail from her home in San Diego to her new home in Bechtelsville, PA. Plaintiff claims that when she received her packages, they were damaged and one package was missing 200 CDs and a CD case.

Both parties agree that in June 2004, Plaintiff went to the Bechtelsville Post Office to file a postal insurance claim and the postmaster gave her a PS Form 1000¹ entitled “Domestic Claim or Registered Mail Inquiry” to fill out. Plaintiff claims the postmaster misled her by telling her she had six months to file her claim when the postal guidelines require a claim

¹The directions listed on PS Form 1000 are identical to the requirements regarding the filing of insurance claims set forth by the United States Postal Service in the Domestic Mail Manual (“DMM”).

for partially missing items be filed within sixty days of shipment. In her Brief in Response to Defendant's Motion for Summary Judgment, Plaintiff specifically asserts

"When Postmaster Izzi gave me the directions for filing a postal insurance claim, I read the "Claims for Loss" chart on the directions page. This chart said that for Insured packages I could not file until 21 days had passed from the ship date and that the claim had to be filed within 180 days. I asked the Postmaster if it was correct that I had 6 months to file, and he responded with 'Yes, if that is what the chart says.'"

Pl.'s Br. in Resp. to Def.'s Mot. for Summ. J.

Both parties agree that on November 22, 2004, nearly six months after Plaintiff received her packages, Plaintiff filed her insurance claim for the missing contents of her package at the Bechtelsville Post Office. However, Plaintiff's initial claim was rejected on its merits and her later appeal was denied for untimeliness. Plaintiff now seeks \$2,600 for the value of her missing items.

Defendant argues that its Motion for Summary Judgment should be granted because Plaintiff failed to exhaust her administrative remedies and follow USPS regulations regarding the filing of her insurance claim. Defendant points to language on PS Form 1000 immediately preceding the "Claims for Loss" chart which reads:

Claims for Damage or Partial Loss of Contents: All claims for damage or loss of contents should be filed immediately, but no later than 60 days from the date of mailing.

Defendant asserts that because Plaintiff's claim was for the loss of contents from her package, the "immediately, but no later than 60 days" requirement governs. Therefore, Defendant argues that this Court should dismiss Plaintiff's Complaint for lack of subject matter jurisdiction because Plaintiff failed to exhaust her administrative remedies.

Defendant also argues that Plaintiff's untimely filing should not be excused because the postmaster's alleged statements constitute negligence, at most, and do not rise to the level of intentional misconduct. Also, Defendant argues that even if the Postmaster

misrepresented the filing deadline to Plaintiff, Defendant's employees do not have the authority to waive or extend the sixty day filing requirement to a period of six months.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2025 (1986).

A party seeking summary judgment bears the initial responsibility of identifying the basis for its motion, along with evidence clearly demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catreet, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986). Rule 56(e) of the Federal Rules of Civil Procedure requires the nonmoving party to supply sufficient evidence, not mere allegations, for a reasonable jury to find in the non-movant's favor. See Oldson v. General Elec. Astrospace, 101 F.3d 947, 951 (3d Cir. 1996). This evidence must be viewed in the light most favorable to the nonmoving party. See Anderson, 477 U.S. at 256.

III. DISCUSSION FOR SUMMARY JUDGMENT

In the present case, Defendant asserts it is immune from Plaintiff's suit because Plaintiff failed to timely file her insurance claim according to postal guidelines and the directions provided on PS Form 1000. Plaintiff argues that Defendant is not immune and should be held liable despite her untimely filing because PS Form 1000 is ambiguous and the postmaster was misleading when he answered her questions regarding when to file her claim. No party disputes the fact that Plaintiff filed her claim nearly six months after she shipped the packages

exceeding the sixty day deadline provided in the postal regulations for claims for damage or partial loss of contents. No party disputes that the package was damaged and missing contents upon arrival at Plaintiff's Bechtelsville home.

"It is a fundamental principle of sovereign immunity that federal courts do not have jurisdiction over suits against the United States unless Congress, via a statute, expressly and unequivocally waives the United States' immunity to suit." Dolan v. United States Postal Service, 377 F.3d 285, 287 (3d Cir. 2004) (citing United States v. Mitchell, 463 U.S. 206, 212, 103 S.Ct. 2961, 77 L.Ed.2d 580 (1983)). "[W]hen the Government does consent to be sued, 'the terms of [the] waiver of sovereign immunity define the extent of the court's jurisdiction.'" Id. (quoting United States v. Mottaz, 476 U.S. 834, 841, 106 S.Ct. 2224, 90 L.Ed.2d 841 (1986)). "Waivers of the Government's sovereign immunity, to be effective, must be unequivocally expressed, and any such waiver must be construed strictly in favor of the sovereign." Id. (quoting United States v. Nordic Village, Inc., 503 U.S. 30, 33-34, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992) (internal quotation marks omitted)).

Accordingly, as a United States federal government defendant, "[t]he USPS is liable only to the extent that it agrees to be liable" as "identified by the postal laws and regulations." TNS Diamonds, Inc. v. United States Postal Service, No. 04-2388, 2005 WL 497831 at *2 (E.D.Pa. Mar. 3, 2005). The Domestic Mail Manual ("DMM") is the relevant postal regulation since it regulates the filing of indemnity claims against the postal service for loss or damage to packages. See Id. The Federal Tort Claims Act ("FTCA") waives the government's sovereign immunity when government employees, such as federal postal workers, act negligently within the scope of their official duties. See 28 U.S.C. § 1346(b). However, the FTCA bars "any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. § 2680(b). Therefore, the DMM defines

Defendant's liability as it pertains to Plaintiff's insurance claim for the missing contents of her package.

In the instant case, this Court concludes Defendant is only liable for claims arising out of the partial loss of contents of a package as defined by the DMM. DMM regulations require a claimant who has purchased insurance to file a claim immediately, or within sixty days of the shipment date of that package, in order to be paid for the loss of missing contents from a package.² Since Plaintiff filed her claim for the missing CD's and CD case nearly six months after her package's shipment date and postal employees are not authorized to extend the sixty day deadline to a six month deadline, Plaintiff's claim is barred by the sovereign immunity doctrine.

In her Response to Defendant's Motion for Summary Judgment, Plaintiff argues that Defendant should have to pay her claim because PS Form 1000 is misleading and ambiguous, as was the statement of the postmaster. However, viewing the evidence in the light most favorable to Plaintiff, Plaintiff does not provide sufficient evidence for a reasonable jury to find in her favor. Accepting the postmaster's statement as alleged by Plaintiff in her Response, "Yes, if that is what the chart says," it is apparent that the postmaster's statement was not inaccurate or misleading, but merely directed Plaintiff back to PS Form 1000 for directions on how to file her insurance claim. Therefore, Plaintiff's claim that the postmaster misled her is not supported by the evidence. Furthermore, PS Form 1000 is not ambiguous because "Time Limits For Filing Claims: Claims for Damage or Partial Loss of Contents" is clearly shown on the form. The form reads,

²DMM 609 Filing Indemnity Claims for Loss or Damage, Section 1.4 When to File for Loss or Damage states "A customer should file a claim immediately, but must file no later than 60 days from the date of mailing, when the contents of an article are damaged or missing from the mailing customer."

Claims for Damage or Partial Loss of Contents: All claims for damage or loss of contents should be filed immediately, but no later than 60 days from the date of mailing.

Therefore, the sixty day deadline for filing Plaintiff's insurance claim is apparent upon a full and complete reading of the form.

In her Response to Defendant's Motion for Summary Judgment, Plaintiff also claims that the Postal Reorganization Act waived the Postal Service's sovereign immunity from suit and therefore, Defendant is not immune from the present suit. However, although Congress provided a general waiver of immunity for the USPS in the Postal Reorganization Act, 39 U.S.C. § 409(c); "section 646 of the FTCA specifically retains sovereign tort immunity for tort claims against the United States 'out of the loss, miscarriage, or negligent transmission of letters or postal matter.'" See 28 U.S.C. § 2680(b); Gownaris v. United States Postal Service, No. 87-3403, 1988 WL 61741 at *1 (E.D.Pa. June 10, 1988), aff'd, 865 F.2d 250 (3d Cir. 1988), cert. denied, 489 U.S. 1054, 109 S.Ct. 1316 (1989)(No. 88-1172). Therefore, the Postal Reorganization Act does not waive Defendant's sovereign immunity in this case.

IV. CONCLUSION

For the above reasons, Defendant's Motion for Summary Judgment is granted. An appropriate Order follows.

BY THE COURT:

CLIFFORD SCOTT GREEN

