

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: October 29, 2019 2:28 PM CASE NUMBER: 2019CV32714
Plaintiff: ELIZABETH MORIN, v. Defendants: ISS FACILITY SERVICES, INC., and CITY AND COUNTY OF DENVER.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 2019CV32714 Courtroom: 414
<p style="text-align: center;">ORDER RE: DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO COLO R. CIV. P. 12(B)(5) AND REQUEST FOR ORAL ARGUMENT</p>	

THIS MATTER comes before me on Defendants ISS Facility Services, Inc. and City and County of Denver's Motion to Dismiss Plaintiff's Complaint Pursuant to Colo R. Civ. P. 12(b)(5) and Request for Oral Argument, filed on August 23, 2019. Plaintiff Elizabeth Morin filed her Response on September 13, 2019. Defendants filed a Reply on September 20, 2019. Having reviewed the parties' filings, the court's file, and applicable law, I **FIND** and **ORDER** as follows:

It is undisputed that Plaintiff Morin's cause of action arose on July 13, 2017. Plaintiff Morin alleges that she suffered damages from an injury that occurred when she slipped in an "unmarked water hazard" at Denver International Airport.

Tort actions, such as Plaintiff Morin's, "must be commenced within two years after the cause of action accrues[.]" C.R.S. § 13-80-102(1)(a). The filing of pleadings is also governed by C.R.C.P. 6(a)(1), which provides in relevant part:

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the

designated period of time begins to run shall not be included. Thereafter, every day shall be counted, including holidays, Saturdays or Sundays. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.[...]

The two-year anniversary of Plaintiff Morin's cause of action arising was Saturday, July 13, 2017. Plaintiff Morin filed this lawsuit on the next day that the Clerk of Court's office was open (*i.e.*, the next business day), Monday, July 15, 2019.

In *Williams v. Crop Prod. Servs., Inc.*, 361 P.3d 1075, 1077-78 (Colo. App. 2015), the Colorado Court of Appeals held that:

[T]he word "year" as used in Colorado statutes "means a calendar year," and [...] therefore precludes a method of computation of years that would require counting of days. Thus, a cause of action must be filed on or before the statutorily specified anniversary date following accrual of the action.

The Court went on to "question whether the Colorado Rules of Civil Procedure ever could have been properly applied to computation of statutory time periods[.]" before concluding that C.R.C.P. 6(a)(1) applies only to "period[s] of time prescribed or allowed *by these rules.*" (Emphasis added.) It does not purport to apply to computation of statutory time periods." *Id.* at 1078; 1078-79.

The circumstances here present an extremely close call. Plaintiff Morin filed this action on the next business day following the expiration of the statute of limitations) – that is, on Monday, July 15, 2019, when the two year anniversary of the alleged injury was Saturday, July 13, 2019 – which is ostensibly permissible under in C.R.C.P. 6(a)(1). The statute governing the statute of limitations requires filing "within two years[" C.R.S. § 13-80-102(1)(a) (emphasis added). Based on the language of *Williams*, I am compelled to conclude that the statute of limitations expired on the second anniversary of the alleged injury (Saturday, July 13, 2019) and C.R.C.P. 6(a)(1) did not permit Plaintiff Morin to file this action on the next possible business day (Monday, July 15, 2019).

For the foregoing reasons, Defendants ISS Facility Services, INC. and City and County of Denver's Motion to Dismiss is **GRANTED**. Accordingly, Defendants request for oral argument is **MOOT**.

The conflicting statutory and Rule language to have led to understandable confusion. Consequently, I find that Plaintiff did not lack substantial justification in choosing to maintain this lawsuit, rather than voluntarily dismiss it.

Nonetheless, an award of fees is mandatory upon dismissal by motion of the defendant prior to trial. C.R.S. § 13-17-201. Defendants motion for attorney's fees and costs shall be filed **within fourteen (14) days of entry of this Order**. Plaintiff shall have **fourteen (14) days after Defendants' submission** to respond. No reply shall be filed. Within that timeframe, any party may request a hearing on the reasonableness of fees. The time for filing post-judgment motion and/or notice of appeal shall not run until I enter a final order including fees.

Done this Tuesday, October 29, 2019

BY THE COURT:



Robert L. McGahey, Jr.
District Judge