

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13828
G/nl

_____AD3d_____

Argued - January 25, 2007

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2005-11542

DECISION & ORDER

In the Matter of Claudia Melissa Colocho, etc.,
et al., respondents, v Nassau University
Medical Center, appellant.

(Index No. 5253/05)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson and Dennis J. Saffran of counsel), for appellant.

Riconda & Garnett, Valley Stream, N.Y. (Joseph Dugan and Michael T. Sullivan of counsel), for respondents.

In a proceeding pursuant to General Municipal Law § 50-e for leave to serve a late notice of claim, Nassau University Medical Center appeals from an order of the Supreme Court, Nassau County (McCarty, J.), entered November 21, 2005, which denied its motion to vacate an ex parte order of the same court dated May 19, 2005, granting the petition or, in the alternative, in effect, for reargument of the petition.

ORDERED that the order entered November 21, 2005, is reversed, on the law, with costs, that branch of the motion which was to vacate the order dated May 19, 2005, is granted, that branch of the motion which was, in the alternative, in effect, for reargument of the petition is denied as academic, and the order dated May 19, 2005, is vacated.

It is undisputed that the appellant was never served with the petition for leave to serve a late notice of claim, and became aware of its existence only after the Supreme Court had issued an ex parte order granting the petition. Under these circumstances, we agree with the appellant that the

February 6, 2007

Page 1.

MATTER OF COLOCHO v NASSAU UNIVERSITY MEDICAL CENTER

Supreme Court never properly obtained jurisdiction over it (*cf. Matter of Callahan v City of New York*, 75 NY2d 899; *Matter of Lewin v County of Suffolk*, 239 AD2d 345, 346; *Matter of Eso v County of Westchester*, 141 AD2d 542, 543). The 1976 amendment to the General Municipal Law (*see* Laws of 1976, ch 745, § 2) changed the manner of service but did not eliminate the requirement that the municipality be served. Accordingly, that branch of the appellant's motion which was to vacate the ex parte order dated May 19, 2005, should have been granted (*see* CPLR 5015[a][4]; *Matter of Cartier v County of Nassau*, 281 AD2d 477, 478), and the alternative branch of the motion, which was for reargument, should have been denied as academic.

In light of our determination, we do not reach the appellant's remaining contentions.

MASTRO, J.P., FISHER, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court