

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

D17972
Y/kmg

_____AD3d_____

Submitted - December 14, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
JOSEPH COVELLO, JJ.

2007-02630

DECISION & ORDER

In the Matter of Richard Grande, et al., respondents,
v City of New York, appellant.

(Index No. 80343/06)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Edward F.X. Hart of counsel), for appellant.

Kelner and Kelner, New York, N.Y. (Todd J. Strier of counsel), for respondents.

In a proceeding pursuant to General Municipal Law § 50-e(5) for leave to serve a late notice of claim, the appeal is from an order of the Supreme Court, Richmond County (Aliotta, J.), dated January 24, 2007, which granted the petition.

ORDERED that the order is reversed, on the law, with costs, the petition is denied, and the proceeding is dismissed.

The Supreme Court abused its discretion in granting the petition for leave to serve a late notice of claim. The petitioners did not establish that the respondent had actual notice of the claim. Although a line of duty injury report was prepared by the Department of Sanitation immediately after the accident, it merely indicated that the petitioner was injured when he slipped from a salt spreader's ladder, which was not sufficient to give the appellant "actual knowledge of the essential facts constituting the claim" (General Municipal Law § 50-e[5]). What satisfies the statute is knowledge of the facts that underlie the legal theory or theories on which liability is predicated (*see Matter of Felice v Eastport/South Manor Cent. School Dist.*, _____AD3d_____ [2d Dept, Jan. 29, 2008]; *Matter of Carpenter v City of New York*, 30 AD3d 594, 595; *Matter of DiBella v City*

February 13, 2008

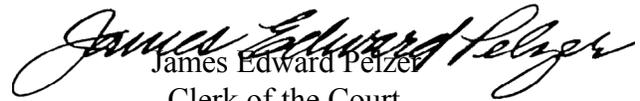
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of New York, 234 AD2d 366, 367). Additionally, the petitioners did not demonstrate a valid excuse for their failure to timely serve a notice of claim (*see Casias v City of New York*, 39 AD3d 681, 683; *Matter of O'Dowd v City of New York*, 226 AD2d 642). Finally, although we need not reach the issue of prejudice based on the foregoing, we note that petitioners failed to demonstrate that the appellant was not prejudiced in its ability to investigate the accident and prepare a defense as a result of the delay (*see Matter of Bruzzese v City of New York*, 34 AD3d 577, 578).

RIVERA, J.P., LIFSON, SANTUCCI and COVELLO, JJ., concur.

ENTER:


James Edward Perlez
Clerk of the Court