

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

D32298
O/kmb

_____AD3d_____

Submitted - September 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2011-00861

DECISION & ORDER

In the Matter of Ellen Silberman, respondent, v
City of Long Beach, appellant.

(Index No. 20787/10)

Corey E. Klein, Corporation Counsel, Long Beach, N.Y. (Charles M. Geiger of counsel), for appellant.

Dougherty Ryan Giuffra Zambito & Hession, New York, N.Y. (Craig M. Flanders and John J. Hession of counsel), for respondent.

In a proceeding pursuant to General Municipal Law § 50-e(5) for leave to serve a late notice of claim, the City of Long Beach appeals from an order of the Supreme Court, Nassau County (Palmieri, J.), entered December 15, 2010, which granted the petition.

ORDERED that the order is affirmed, with costs.

The Supreme Court providently exercised its discretion in granting the petition for leave to serve a late notice of claim. The petitioner served a notice of claim 1 day after the statutory 90-day period expired, and served an amended notice of claim more precisely identifying the location of her accident 12 days later. Under these circumstances, the appellant acquired actual knowledge of the essential facts constituting the claim within a reasonable time after the expiration of the 90-day period (*see Matter of Ambrico v Lynbrook Union Free School Dist.*, 71 AD3d 762, 763; *Matter of Gelish v Dix Hills Water Dist.*, 58 AD3d 841, 842; *Matter of Urgiles v New York City School Constr. Auth.*, 283 AD2d 434). Moreover, the petitioner demonstrated that her short delay in serving her

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original and amended notices of claim would not substantially prejudice the appellant in maintaining its defense on the merits (see *Matter of Billman v Port Jervis School Dist.*, 84 AD3d 1367, 1369-1370; *Matter of Ambrico v Lynbrook Union Free School Dist.*, 71 AD3d at 763-764; *Matter of Ruffino v City of New York*, 57 AD3d 550, 551-552; *Bussey v City of New York*, 50 AD3d 938, 939; *Barnes v New York City Hous. Auth.*, 262 AD2d 46, 47).

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court