

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-01281

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GORSKI, JJ.

DOMINIC R. PARTON, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ONONDAGA COUNTY, DEFENDANT-APPELLANT,
ET AL., DEFENDANTS.

GORDON J. CUFFY, COUNTY ATTORNEY, SYRACUSE (MARY J. FAHEY OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SUGARMAN LAW FIRM, LLP, SYRACUSE (AMY M. VANDERLYKE OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundolo, A.J.), entered January 6, 2010. The order granted the application of plaintiff for leave to file and serve a late notice of claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court did not abuse its discretion in granting plaintiff's application seeking leave to serve a late notice of claim pursuant to General Municipal Law § 50-e (5). Plaintiff offered a reasonable excuse for failing to serve the notice of claim within the statutory 90-day period (*see* § 50-e [1] [a]; *see generally* *Matter of LaMay v County of Oswego*, 49 AD3d 1351, 1352, *lv denied* 10 NY3d 715). Contrary to defendant's contention, plaintiff "made a persuasive showing that [Onondaga County (defendant)] 'acquired actual knowledge of the essential facts constituting the claim' . . .[, and defendant has] made no particularized or persuasive showing that the delay caused [it] substantial prejudice" (*Wetzel Servs. Corp. v Town of Amherst*, 207 AD2d 965; *see Matter of Rodriguez v Western Regional Off-Track Betting Corp.*, 74 AD3d 1811).

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court