

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

985

CA 12-00515

PRESENT: FAHEY, J.P., PERADOTTO, CARNI, AND SCONIERS, JJ.

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KAREN CASALE, AS PARENT AND NATURAL GUARDIAN  
OF STEPHANIE CASALE, AN INFANT,  
CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

LIVERPOOL CENTRAL SCHOOL DISTRICT,  
RESPONDENT-APPELLANT.

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SUGARMAN LAW FIRM, LLP, SYRACUSE (JENNA W. KLUCSIK OF COUNSEL), FOR  
RESPONDENT-APPELLANT.

KUEHNER LAW FIRM, PLLC, SYRACUSE (BRIAN D. ROY OF COUNSEL), FOR  
CLAIMANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Anthony J. Paris, J.), entered January 26, 2012. The order granted  
the application of claimant for leave to serve a late notice of claim.

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

Memorandum: Contrary to respondent's contention, Supreme Court  
did not abuse its discretion in granting claimant's application for  
leave to serve a late notice of claim pursuant to General Municipal  
Law § 50-e (5). Although a court may properly consider whether a  
claimant provided a reasonable excuse for failing to serve a timely  
notice of claim (*see Parton v Onondaga County*, 81 AD3d 1433, 1433-  
1434), a claimant's failure to tender a reasonable excuse "is not  
fatal where . . . actual notice was had and there is no compelling  
showing of prejudice to [respondent]" (*Matter of Hall v Madison-Oneida  
County Bd. of Coop. Educ. Servs.*, 66 AD3d 1434, 1435 [internal  
quotation marks omitted]; *see Hale v Webster Cent. School Dist.*, 12  
AD3d 1052, 1053). Here, claimant "made a persuasive showing that  
[respondent] 'acquired actual knowledge of the essential facts  
constituting the claim' . . . [and respondent has] made no  
particularized or persuasive showing that the delay caused [it]  
substantial prejudice" (*Wetzel Servs. Corp. v Town of Amherst*, 207  
AD2d 965, 965; *see* § 50-e [5]).

Entered: October 5, 2012

Frances E. Cafarell  
Clerk of the Court