



after the cause of action therefor shall have accrued”, and “in the case of any suit, action or proceeding for the recovery or payment of money ... a notice of claim shall have been served upon the Port Authority by or on behalf of the plaintiff or plaintiffs at least sixty days before such suit, action or proceeding is commenced.” These provisions parallel those found in other statutes which govern the commencement of actions against municipalities and public corporations. (See, General Municipal Law 5-e and 50-i; Education Law 3813; Village Law 341-b; County Law 52)

The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained when a bus owned by Green Bus Lines, in which she was a passenger, was involved in an accident with a Port Authority police car. The accident occurred when the bus attempted to pass the police car that had stopped to investigate a stationery truck in a moving lane of the Van Wyck Expressway. As the bus was passing to the right of the Port Authority car, the officer seated in the front passenger seat opened the door to exit the car. The bus driver brought the bus to an abrupt stop but still struck the open car door. The plaintiff claims she sustained injuries as the result of being thrust forward and thrown from her seat when the bus suddenly stopped. After a bifurcated trial of the liability issues, the jury returned a verdict finding both Green Bus Lines and The Port Authority negligent and attributing ninety percent of fault to Green Bus Lines and ten percent to the Port Authority.

The plaintiff named only Green Bus Lines and the bus driver, Carlos Williams, as defendants. The Port Authority was brought in by defendant, Green Bus Lines, pursuant to CPLR 1007 which permits a defendant to implead a party “who is or may be liable to that defendant for all or part of the plaintiff’s claim against that defendant”. A motion by the plaintiff to add the Port Authority as a direct defendant was denied for failure of the plaintiff to comply with the statutory notice requirements for commencing an action against the Port Authority. As a result, the Port Authority remained in the action solely as a third party defendant.

A cause of action for common law indemnification or contribution, such as that set forth by Green Bus Lines in the third party action against the Port Authority, does not accrue until the third party plaintiff makes payment of an amount which exceeds its pro rata share of the judgment. ( See, Bay Ridge Air Rights, Inc. V. State of New York, 44 NY2d 49). It is well settled that because of this fact, the notice requirements for the commencement of an action, relied upon by the Port Authority on this motion, are inapplicable to the maintenance of a third party action. ( See generally, Matter of Valstrey Serv. Corp. V. Board of Elections, 2 NY2d 413; Quinn v. Spitale, 203 AD2d 674; De Leonibus v. Scognamilio, 183 AD2d 697; San Marco Construction Corp v. Aetna Casualty and Surety Company, 162 Ad2d 514 Dutton v. Mitek Realty Corp, 95 Ad2d 769; Zillman v. Meadowbrook Hospital Co., Inc., 45 Ad2d 267; Levine v. Miteer, 16 Ad2d 990). Therefore, the motion by the Port Authority to dismiss the third party complaint, based on a failure to comply with the notice requirements of McKinney's Unconsolidated Laws Section 7107, is without merit and must be denied.

Prior to the trial of the liability issues in this action, the Port Authority had not asserted the failure to comply with the requirements of Section 7107 as a bar to the third party action commenced by Green Bus Lines. It was not raised in the answer to the third party complaint, nor in the opposition to plaintiff's motion to add the Port Authority as a direct defendant. The issue was only raised after the jury rendered its verdict finding the Port Authority ten percent at fault for the accident in which the plaintiff claims she was injured. At that time, a previously prepared memorandum of law in support of the motion was submitted to the Court, but without motion papers or an attorney's affirmation. However, the delay in raising the notice issue did not constitute a waiver of that claim, since compliance with the requirements of Section 7107 is a condition precedent to an action against the Port Authority. (See, Yonkers Contr. Co. V. Port Auth., Trans -Hudson Corp., 93 NY2d 375).

In *Camarella v. East Irondequoit Central School Board*, (34 NY2d 139), an order of the Appellate Division, dismissing the complaint against the school board for failure to comply with the notice requirements of General Municipal Law Section 50-e, was affirmed. Although the school board prevailed on the appeal, the Court of Appeals assessed costs and disbursements against it for misleading the plaintiffs by failing to clearly assert the notice issue until after the tort claim had been tried on the merits. In this case, the “notice” claim raised by the Port Authority is without merit and the third party complaint will not be dismissed. Thus, the third party plaintiff, Green Bus Lines, has not sustained the type of prejudice inflicted upon the plaintiff in the *Camarella* case, by the delay in asserting the notice issue.

Accordingly, the motion to dismiss the third party complaint is denied and the parties are directed to proceed with the trial of the damages issues.

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**DARRELL L. GAVRIN, A.J.S.C.**