

Campbell-Pegram v New York City Tr. Auth.
2007 NY Slip Op 30276(U)
March 8, 2007
Supreme Court, New York County
Docket Number: 0118515
Judge: Kibbie F. Payne
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

JANICE CAMPBELL-PEGRAM,

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN AND
BRONX SURFACE TRANSIT OPERATING AUTHORITY
(M.A.B.S.T.O.A.) and ROLAND LEWIS,

Defendants.

INDEX NO. 118515/06

MOTION DATE 1/3/07

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, this motion, brought by order to show cause, for leave to file a late notice of claim pursuant General Municipal Law § 50-e (5) and to amend a notice of claim pursuant to General Municipal Law § 50-e (6) is granted as indicated in the attached memorandum.

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NEW YORK

Dated: March 8, 2007


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4

JANICE CAMPBELL-PEGRAM,

Index No. 118515/06

Petitioner,

Motion Seq. 001

-against-

ORDER

NEW YORK CITY TRANSIT AUTHORITY,
MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY (M.A.B.S.T.O.A.) and
ROLAND LEWIS,

Respondents.

KIBBIE F. PAYNE, J.:

Petitioner Janice Campbell-Pegram moves, by ~~order~~ to show cause, for leave to file a late notice of claim against respondents Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) and Ronald Lewis and for leave to amend her notice of claim against respondent New York City Transit Authority (NYCTA) to modify the description of the accident location (see General Municipal Law § 50-e [5],[6]). Respondents do not appear in opposition to this application.

While MABSTOA is a subsidiary of the NYCTA, the two "are separate entities" each requiring a notice of claim (see generally Reis v Manhattan and Bronx Surface Tr. Operating Auth., 161 AD2d 288 [1st Dept 1990], lv denied 76 NY2d 707 [1990]). General Municipal Law § 50-e (5) provides that "the court, in its discretion, may extend the time to serve a notice of claim" up to

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one year and ninety days after the happening of the event upon which the claim is based (see General Municipal Law § 50-e [5]; see also Public Authorities Law § 1212 [2]; Melendez v Manhattan and Bronx Surface Tr. Operating Auth., 137 AD2d 390, 392 [1st Dept 1988])). The pertinent factors the court must consider in determining whether to grant an extension include:

"whether the public corporation or its attorney . . . acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one or within a reasonable time thereafter . . .; whether the claimant in serving a notice of claim made an excusable error concerning the identity of the public corporation against which the claim should be asserted; and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining a defense on the merits"

(General Municipal Law § 50-e [5]).

Here, it is undisputed that MABSTOA acquired actual knowledge of the alleged accident within the requisite time period and that a hundred and ninety days have not passed since petitioner's injury. Petitioner made an understandable error in regard to which authority was in charge of operating the subject bus, and MABSTOA does not allege prejudice will result from the late filing. Thus, the court will grant petitioner permission to file a late notice of claim against MABSTOA and Ronald Lewis.

The court will also grant petitioner's motion to amend the notice of claim filed against NYCTA to make a minor change in the

description of the accident location. Specifically, petitioner seeks to substitute "at or near 123rd" Street with "at or near 120th" Street based on information that she received from the office of the NYCTA, Claims Examiner. General Municipal Law § 50-e (6), at the discretion of the court, "permits amendment to a notice of claim to correct a mistake or omission made in good faith, provided the public corporation is not prejudiced" (Olivera v City of New York, 270 AD2d 5, 6 [1st Dept 2000]).

NYCTA does not allege bad faith on petitioner's part or claim that the proposed amendment is prejudicial. Accordingly, it is

ORDERED that this petition is granted.

This constitutes the decision and order of the court.

Date: March 8, 2007

Enter: _____



Kibbie F. Payne, J.S.C.

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