

Garzon v Metropolitan Transp. Auth.

2007 NY Slip Op 30519(U)

March 28, 2007

Supreme Court, New York County

Docket Number: 0115860/2006

Judge: Donna Marie Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 21

GARZON, JOSE L.

INDEX No. 115860/06

Plaintiff,
-against-

MOTION DATE _____

METROPOLITAN TRANSPORTATION AUTHORITY
& METRO NORTH COMMUTER RAILROAD,

MOTION SEQ. No. 001

Respondent.

MOTION CAL No. _____

The following papers, numbered 1 to 3 were read on this motion to file a late notice of claim.

Notice of Motion/Order to Show Cause-Affidavits 14(b), Exhibits

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

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Upon the foregoing papers, it is ordered that this motion for leave to serve a late notice of claim is decided as follows:

Petitioner alleges to have been injured on February 22, 2006 while employed as a laborer by Stonewall Contracting at the Fleetwood station of the Harlem River line of Metro North Commuter Railroad (hereinafter "Metro North"), a subsidiary of the Metropolitan Authority (hereinafter "MTA"). Separate Notices of Claim were served on both defendants on July 20, 2006, some 58 days after the 90 day due date for filing Notices of Claim in this action.

Thereafter an action for personal injuries was commenced on October 24, 2006 by filing the summons and complaint with the County Clerk's Office, and served on both defendants on November 7, 2006. Issue was joined by defendants on November 29, 2006 by the service of an answer. Defendants asserted by way of an affirmative defense that plaintiff failed to file a timely Notice of Claim pursuant to the Public Authority Law Section 1276(2).

General Municipal Law § 50-e(5) enumerates certain factors which the court should consider in making a determination on a request for an exemption from the 90 day filing requirement for a Notice of Claim, of which the key considerations are "whether the petitioner has demonstrated a reasonable excuse for failure to serve a timely notice of claim, whether the [public corporation] acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the [public corporation] in maintaining its defense on the merits" (Matter of Charles v New York City Health & Hosps. Corp., 166 AD2d 526, 527 [2nd Dept. 1990])

In this case, the defendants oppose only that branch of the motion seeking leave to serve a late notice of claim against defendant, MTA. Defendants contend that not only was the Notice of Claim filed late, but that plaintiff failed in its moving papers, to establish that he was physically incapacitated during the statutory period of time, and that such incapacitation prevented him from timely filing a Notice of Claim.

This court finds that the plaintiff has demonstrated a reasonable excuse for failure to serve a timely Notice of Claim, and that the defendants acquired actual knowledge of the essential facts constituting the claim after a reasonable time thereafter. Additionally, no prejudice inured to the defendants which would hamper their ability in maintaining its defense on the merits.

Accordingly, the Notice of Claim in the proposed form annexed to the moving papers is deemed timely served upon service of a copy of such judgment, with notice of entry, on the defendants.

This constitutes the judgment of the court.

Dated: 3-28-07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).