

**Matter of Belin v City of New York**

2007 NY Slip Op 30839(U)

April 13, 2007

Supreme Court, New York County

Docket Number: 0102393/2007

Judge: Eileen A. Rakower

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

PART 5

Index Number : 102393/2007

BELIN, JOAN

vs

CITY OF NEW YORK

Sequence Number : 001

LEAVE SERVE LATE NOT. OF CLAIM

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1
2
3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

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

**FILED**

APR 23 2007

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 4/13/07

EILEEN A. RAKOWER S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

ISC

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
In the Matter of the Application of  
JOAN BELIN guardian of RAYSHAUN WAITERS,

Petitioner,

Index No.  
102393/07

- against -

DECISION/ORDER

THE CITY OF NEW YORK and  
THE NEW YORK CITY BOARD OF EDUCATION,

Respondents.

**FILED**  
APR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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HON. EILEEN A. RAKOWER

Plaintiffs bring this action for personal injuries allegedly sustained when infant plaintiff Rayshaun Waiters ("Infant Plaintiff") fell in gym class on October 23, 2006. Plaintiffs now move for leave to file a late notice of claim. Defendants the City of New York and The New York City Board of Education ("City") oppose the motion.

Plaintiffs, in support of their motion, argue that there was a delay in filing their notice of claim because they were waiting for an emergency room report from Harlem Hospital. Plaintiffs assert that they made the request on November 29, 2006 and that they did not receive it until February 1, 2007. Additionally, plaintiffs assert that the City had actual notice of the claim because infant plaintiff was injured during school hours on school property and was attended to by school personnel for his injuries. Further, plaintiffs argue that there has not been a lengthy delay between the time that they were required to file and the date of the instant motion, thus, City will not be prejudiced by the delay.

City, in opposition, argues that plaintiff does not submit evidence to support the claim that City had actual notice of the incident. Further, City argues that plaintiff does not offer a reasonable excuse for its delay and that it will substantially be prejudiced by the filing of a late notice.

The court has discretion to grant leave to file a late notice of claim. Key factors

to be considered include whether the petitioner has demonstrated a reasonable excuse for failing to file such notice timely, whether the public corporation acquired actual notice of the essential facts within 90 days after the claim arose or within a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in defending on the merits. No one of these factors is determinative. *Nieves v. New York Health and Hospitals Corp.*, 34 A.D.3d 336 (1<sup>st</sup> Dept. 2006).

According to the sworn affidavit of plaintiff Joan Belin, infant plaintiff's grandmother, the ten year old infant plaintiff was "bleeding extensively" and she was contacted by the school nurse shortly after the incident. Infant plaintiff's injuries were apparent immediately after the incident and Ms. Belin was made aware of them by the school itself.

Plaintiff served the instant motion on February 22, 2007, just 32 days after the time to file a timely notice of claim expired. Inasmuch as the school itself notified the infant's guardian on the day of the accident, it is evident defendant had actual notice of the incident.

Wherefore it is hereby

ORDERED that plaintiff's motion for leave to file a late notice of claim is granted.

This constitutes the decision and order of the court.

Dated: April 13, 2007



Eileen A. Rakower, J.S.C.

**FILED**  
APR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE