

Ghosh v City of New York

2007 NY Slip Op 31657(U)

June 11, 2007

Supreme Court, New York County

Docket Number: 0105883/2007

Judge: Paul G. Feinman

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

PRESENT: FEINMAN
Justice

PART 52

GHOSE, GABRIELLA

INDEX NO. 105883/07

MOTION DATE 6/6/07

- v -

THE CITY OF NEW YORK,
ET AL,

MOTION SEQ. NO. 01

MOTION CAL. NO. 4

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

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~~ petition is denied

for the reasons set forth
in the annexed decision &
order.

UNFILED JUDGMENT

his 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 41B).

Dated: 6/11/07

[Signature]
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: CIVIL TERM: PART 52

-----X
GABRIELLA GHOSH,
Petitioner,

-against-

Index Number 105883/2007
Submission Date 6/6/2007
Mot. Seq. No. 001
Cal. No. 4

THE CITY OF NEW YORK and NEW YORK CITY
HOUSING AUTHORITY,
Respondents.

**DECISION, ORDER &
JUDGMENT**

-----X

Papers considered in review of this petition to serve late Notice of Claim:

Papers	Numbered
Order to Show Cause and Affidavits Annexed	1
Affirmation in Opposition	2
Affirmation in Opposition	3

-----X
PAUL G. FEINMAN, J.¹:

This petition seeks leave to file a late Notice of Claim pursuant to General Municipal Law § 50-e. For the reasons set forth below, this application is denied.

Petitioner Gabriella Ghosh was injured when she tripped and fell on Avenue D, between E 4th and E 3rd Streets, on December 22, 2006. The petitioner contacted counsel on April 16, 2007 and a Notice of Claim was filed with both defendants on April 30, 2007.

A Notice of Claim against a municipality must be filed within 90 days of the accrual of the cause of action. Gen. Mun. Law § 50-e(1)(a). Similarly, a Notice of Claim filed within 90 days is a condition precedent to suit against a public housing entity.

¹ The court gratefully acknowledges the assistance of Judicial Intern Drew Gulley in the research and drafting of this decision.

Public Housing Law § 157. A party who fails to file a timely Notice of Claim may seek court permission to file a late notice. Gen. Mun. Law § 50-e(5).

In deciding whether to grant an extension of time to file a Notice of Claim, the Court considers “whether there is a reasonable excuse for the delay, whether the public corporation acquired actual knowledge of the facts constituting the claim within 90 days or a reasonable time thereafter and whether the public corporation's defense would be substantially prejudiced by the delay.” *Jusino v New York City Housing Authority*, 255 AD2d 41, 41-42 (1st Dep’t 1999). No single factor is dispositive; rather, a decision to grant or deny a late Notice of Claim is a confluence of the factors demonstrated by the petitioner. *See, e.g., Rivera v New York City Housing Authority*, 25 AD3d 450 (1st Dep’t 2006), *Marano v New York City Housing Authority*, 39 AD3d 238 (1st Dep’t 2007).

Petitioner filed her Notice of Claim 139 days after the alleged incident. The only reason proffered by the petitioner for her failure to file timely Notice of Claim is ignorance of the statutory limitation. Ord. to Show Cause Ex. C, Ghosh Aff. ¶ 4. However, ignorance of the law is not a valid excuse. *Alper v City of New York*, 228 AD2d 390 (1st Dep’t 1996).

Petitioner points to the injuries she suffered to the “entire left side” of her body; specifically indicating her “left leg, back, and left shoulder.” Ex. C, Pet. Aff. ¶ 2. She does not, however, state that her injuries prevented her from timely speaking to an attorney, and the nature of her injuries would not appear to have prevented her from filing a timely Notice of Claim. *Compare, Matter of Strauss v New York City Trans. Auth.*, 195 AD2d 322 (1st Dep’t 1993), *Fenton v County of Dutchess*, 148 AD2d 573 (2d Dep’t 1989).

Actual notice of the incident is crucial for the defendants to facilitate an investigation into the circumstances of the incident while information remains fresh. *Teresta v City of New York*, 304 NY 440, 443 (1952). Petitioner attempts to argue that defendants had notice because an ambulance was called and police arrived at the scene. Ord. to Show Cause, Ulezalka Aff. ¶ 9; Ex. C, Ghosh Aff. ¶ 3). She fails to proffer supporting materials to establish the presence of these emergency responders. Even were there reports attached, the existence of an ambulance and/or police report is not necessarily sufficient to provide actual notice either to the City or the Housing Authority. *See, Olivera v City of New York*, 270 AD2d 5 (1st Dep't 1991) (police report lacking particularity of details and indication that injured party was taken by ambulance to hospital is insufficient to establish notice); *Evans v New York City Hous. Auth.*, 176 AD2d 221 (1st Dep't. 1991) (police report stating that the victim was raped in an elevator held insufficient to put building on notice of claim concerning defective door lock and lack of security).

Petitioner's argument that her failure to file a timely Notice of Claim does not prejudice the defendants is negated by the transience of the conditions upon which she bases her claim. *See, Embery v City of New York*, 250 AD2d 611 (2d Dep't 1998). The petition alleges that she was injured because of ongoing construction work "along with a defective, broken, unlevel, and uneven holed sidewalk." Ord. to Show Cause, Ulezalka, F., ¶ 3. However, construction work is a transitory condition. The opportunity for the defendants to conduct a meaningful investigation into the physical circumstances surrounding the area in which the petitioner was injured is reduced by the length of time the petitioner took to file her Notice. *Harris v City of New York*, 297 AD2d 473 (1st


Dep't 2002); *Tavares v City of New York*, 26 AD3d 297, 298 (1st Dep't 2006). Absent notice and a reasonable excuse for the delay, the transient nature of the construction work weighs against an extension of time. *Harris*, 297 AD2d at 474. Here, the delay in serving a Notice of Claim to the defendants is prejudicial.

The petitioner's attempt to avoid the consequences of untimely notice does not adequately demonstrate any § 50-e(5) factors militating in her favor, and on balance, the court is unpersuaded that leave to file a late notice of claim should be granted. It is therefore

ORDERED and ADJUDGED that the petition for leave to file a late Notice of Claim is denied and the proceeding is dismissed.

 This constitutes the decision, order and judgment of the court.

Dated: June 11, 2007 _____
 New York, New York



 J.S.C.

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
 41B).