

**Dellaportas v Triborough Bridge and Tunnel  
Auth.**

2007 NY Slip Op 32217(U)

July 17, 2007

Supreme Court, New York County

Docket Number: 0106761/2007

Judge: Shirley W. Kornreich

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

PRESENT: KORNREICH  
Justice

PART 54

DELLAPORTAS, PETROS

INDEX NO. 106761/07

MOTION DATE 6/21/07

MOTION SEQ. NO. 02

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

- v -

TRIBOROUGH BRIDGE +  
TUNNEL AUTHORITY, ET AL.

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

**FILED**

JUL 23 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/17/07

  
**HON. SHIRLEY WERNER KORNREICH**  
J.S.C.

Check one:  FINAL DISPOSITION  
Check if appropriate:  DO NOT POST

NON-FINAL DISPOSITION  
 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: PART 54

-----X

PETROS DELLAPORTAS,

Petitioners,

Index No.: 111202/06

DECISION  
and ORDER

For Leave to File a Notice of Claim Nunc Pro Tunc

-against-

TRIBOROUGH BRIDGE & TUNNEL AUTHORITY  
AND JONEL OKOLISAN

Respondent.

-----X  
KORNREICH, SHIRLEY WERNER, J.:

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

This is a personal injury proceeding where the petitioner allegedly suffered serious injuries from an automobile accident in the Midtown Tunnel, New York, N.Y., on January 8, 2007. Petitioner here seeks leave to file a notice of claim, nunc pro tunc, on respondents the Triborough Bridge and Tunnel Authority (the "Authority") and Jonel Okolisan. Respondents do not oppose.

I. *Background*

On January 8, 2007 petitioner was driving his vehicle in the Midtown Tunnel when a vehicle owned by the Authority, and operated by Okolisan, allegedly changed lanes, from a closed fast lane to an open slow lane, and collided with petitioner's car. He claims he suffered severe injuries specifically to his neck, back, and right shoulder.

Petitioner filed his notice of claim on May 18, 2007. Prior to filing, petitioner's counsel sent three letters dated February 8, February 22, and March 26, 2007 outlining that petitioner had

retained counsel and would be pursuing a personal injury/negligence claim against the Authority and Okolisan as a result of the January 8 accident. The March 26 letter also contained documents regarding the claim.

Petitioner argues that respondents would not suffer any unfair prejudice if the late notice of claim is allowed since the accident scene remains unchanged and there were no witnesses other than the drivers. Further, petitioner argues that the Authority was put on notice of the claim from its counsel's three letters during February and March 2007.

## II. *Conclusions of Law*

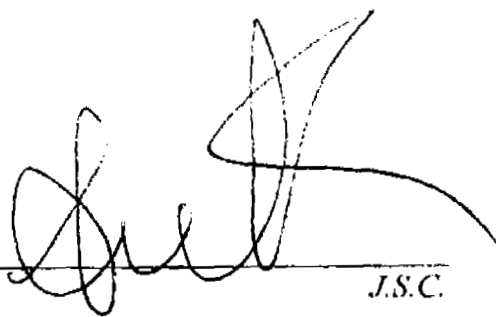
General Municipal Law § 50-e (5) confers upon the court discretion to determine whether to grant or deny leave to serve a late notice of claim. *In the Matter of Eve Dubowy v. City of New York*, 305 A.D.2d 320, 321 (1<sup>st</sup> Dept. 2003). The factors the court must consider to determine if leave should be granted are: (1) whether the movant provided a reasonable excuse for the failure to serve notice within the statutory time frame; (2) whether the municipality had actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter; and (3) whether the delay would substantially prejudice the municipality in its defense. *Dubowy*, 305 A.D.2d at 321. The presence or absence of any factor is not determinative and the absence of a reasonable excuse is not fatal. *Id.* This provision is remedial in nature, and should be liberally construed. *Id.*

Here, petitioner has not provided an excuse for why the notice of claim was filed on May 18, 2007 approximately 39 days past the 90 day deadline. However, the Authority received three letters from petitioner's counsel putting them on notice that a lawsuit would be filed against them regarding the January 8, 2007 accident. Also, since there were no witnesses to the

accident, other than the drivers, and petitioner seems to have a legitimate claim, the delay would not prejudice the Authority in its defense. *See Dubowy*, 305 A.D.2d at 321 (§ 50-e is designed to ensure municipality has an adequate opportunity to explore merits of claim while information is available, but is not intended to defeat rights of those with legitimate claims). Accordingly, it is

ORDERED that petitioner's motion is granted and the notice of claim, in the form attached to the moving papers, is deemed served on respondents Triborough Bridge and Tunnel Authority and Jonel Okolisan, nunc pro tunc.

ENTER:



J.S.C.

DATE: July 17, 2007  
New York, N.Y.

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