

Matter of Pullum v City of New York

2007 NY Slip Op 33321(U)

October 11, 2007

Supreme Court, New York County

Docket Number: 0111232/2007

Judge: Walter Tolub

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

PRESENT: _____

PART 15

Index Number : 111232/2007
PULLUM, MICHAEL
 vs.
CITY OF NEW YORK
 SEQUENCE NUMBER : # 001
 LEAVE TO SERVE A LATE NOTICE OF CLAIM

Justice _____

INDEX NO. 111232-07

MOTION DATE _____

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

are 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, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

OCT 16 2007

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 10/11/07

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----X
APPLICATION of MICHAEL PULLUM

Index No. 111232/07
Mtn. Seq. 001

Petitioner,

-against-

THE CITY OF NEW YORK

Respondent.
-----X

WALTER B. TOLUB, J.:

By this motion Petitioner seeks an order pursuant to Article 4 of the CPLR and New York General Municipal Law (GML) Section 50-e(5) permitting the filing of a late Notice of Claim nunc pro tunc, regarding claims that arose between April 13, 2006 and August 7, 2007.

Facts

Petitioner is a street vendor in Harlem selling what he claims are items with religious and/or political significance. Petitioner claims that because of the nature of the items he sells, he has been the target of police harassment including being arrested for unlicensed vending. All of the charges were eventually dismissed and the Petitioner claims he does not need a license because the items he sells qualify as religious or political. The most recent summons was given to Petitioner on August 7, 2007 and is returnable on October 19, 2007. The most recent summons before that involved an arrest on December 23, 2006. That charge was dismissed on June 21, 2007.

A Notice of Claim was filed with the Comptroller's office on August 15, 2007 and identified claims beginning in January 2005 running through August 2007. However, Petitioner seeks leave by this application to file a late Notice of Claim for seven dates: April 13, 2006, May 20, 2006, August 1, 2006, September 7, 2006, November 25, 2006, December 23, 2006 and August 7, 2007. With regard to the December 23, 2006 claim, approval to file late Notice of Claim is sought for malicious prosecution since the August 15, 2007 filing was within 90 days of the June 21, 2007 dismissal. Also, in regard to the April 13, 2006 incident, late notice approval is requested for a malicious prosecution charge based on the January 17, 2007 dismissal.

Discussion

GML §50-e requires that in cases founded upon a tort, an injured party is required to inform the allegedly culpable public entity of the facts underlying the claim by filing a "Notice of Claim." The claim must be filed with within ninety days of the incidents giving rise to the injury. (Id.) This statutory scheme ensures that the public entity receive sufficient information promptly in order to investigate a claim and gather appropriate evidence (O'Brien v. City of Syracuse, 54 NY2d 353, 359 [1981]).

GML §50-e also provides that the court, in its discretion, may grant leave to serve a late notice of claim so long as the application is made within the statute of limitations, here a

year and ninety days. (GML 50-e; Semyonova v. New York City Housing Authority, 15 AD3d 181 [1st Dept 2005]). In determining whether to grant the extension, the court considers the following factors: (1) whether the claimant had a reasonable excuse for the delay in filing the late notice of claim; (2) whether the public corporation acquired actual knowledge of the essential facts constituting the claim within the specified time or a reasonable time thereafter; and (3) whether the delay in filing the notice of claim substantially prejudiced the municipality in maintaining its defense on the merits. (Id.)

As a preliminary matter, the court notes that Petitioner's motion for leave to serve a late notice of claim was made within the applicable one year and ninety day statute of limitations.

Petitioner claims that his delay was reasonable and was attributed to not being represented by counsel. Petitioner believed that he had to resolve all of the charges against him before being able to pursue civil charges. Respondent argues that Petitioner's excuse is not reasonable and that therefore the motion should be denied. Contrary to Respondent's argument, the absence of an acceptable excuse for the delay is not necessarily fatal to Petitioner's motion for leave to serve a late Notice of Claim. (Justiniano v. New York City Housing Authority Police, 191 AD2d 252, 252 [1st Dept 1993] citing Reisse v. County of Nassau 141 AD2d 649 [2d Dept 1988]). Rather, all factors are to

be considered, in particular, whether actual knowledge of the essential facts constituting the claim within the 90-day statutory period or shortly thereafter. (Id. citing Rodriguez v. County of Nassau, 126 AD2d 536, 537 [2d Dept 1987]).

Where the City has actual knowledge of the relevant facts the Court may extend the time to serve a Notice of Claim. (GML §50-e; GML 50-I; Sarioo v. New York City Health and Hospitals Corp., 252 AD2d 449 [1st Dept 1998]). Knowledge is imputed upon the municipality for claims, such as here, of false imprisonment and malicious prosecution through the officers who made the arrest and initiated the prosecution. (Justiniano v. New York City Housing Authority Police, 191 AD2d 252, 252 [1st Dept 1993] citing Reisse v. County of Nassau 141 AD2d 649 [2d Dept 1988]). Furthermore, where the police conduct an investigation in preparation for criminal prosecution or the police and the District Attorney work together to investigate a case, actual notice of the petitioner's claims can be imputed on the public entities in question. (Goodall v. City of New York, 179 AD2d 481 [1st dept 1992]; Reisse v. County of Nassau 141 AD2d 649 [2d Dept 1988]; Hasmath v. Cameb, 5 AD3d 438 2d Dept 2004]).

In addition, Petitioner filed a complaint with the Civil Complaint Review Board (CCRB) regarding the events that arose on November 25, 2006 and August 7, 2007. (See Goodall v. City of New York, 179 AD2d 481 [1st Dept 1992] where the court held that

a CCRB or police investigation constituted actual notice to the municipal defendant). Complaints have also been made to the Internal Affairs Bureau about the conduct of various police officers in regard to events on those two dates.

Here, each of the claims for which Petitioner seeks leave to file a late Notice of Claim involves charges, not merely reports, which were made by police officers. Investigations were conducted by the police and District Attorneys' office in both pursuing the prosecution of Petitioner and in investigating his claims of police misconduct. The facts and circumstances surrounding the incident were investigated by the CCRB as well as by the police in preparation for Petitioner's prosecution. It follows that knowledge of the facts constituting the Petitioner's claims may be imputed to the Respondent who will not be prejudiced by the delay in filing the late Notice of Claim (Goodall v. City of New York, 179 AD2d 481 [1st Dept 1992]; Tatum v. City of New York, 161 AD2d 580 [2d Dept 1990]). Accordingly it is

ORDERED that Petitioner's motion to file a late Notice of Claim is granted.

This memorandum opinion constitutes the decision and order of the Court. 10/11/07

Dated:

HON. WALTER B. TOLUB, J.S.C.

FILED
OCT 16 2007
NEW YORK
COUNTY CLERK'S OFFICE