

Campiglia v Battery Park City Auth.

2008 NY Slip Op 31452(U)

May 22, 2008

Supreme Court, New York County

Docket Number: 0117927/2007

Judge: Martin Shulman

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

PRESENT: MARTIN SHULMAN
J.S.C.

PART 1

Justice

Index Number : 117027/2007

CAMPIGLIA, ANTHONY

VS.

BATTERY PARK CITY AUTHORITY

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 117027-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

Lead on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits A+B

Answering Affidavits — Exhibits A+B

Replying Affidavits _____

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the attached decision and order.

FILED
MAY 27 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: May 22, 2008

MARTIN SHULMAN

J.S.C.

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 CITY OF NEW YORK
 COUNTY OF NEW YORK: PART 1

-----X
 ANTHONY CAMPIGLIA,
 Plaintiff,

Index No.: 117027/07

Decision and Order

-against-

BATTERY PARK CITY AUTHORITY,
 HENEGAN CONSTRUCTION CO., INC.,
 EURO-TECH CONSTRUCTION CORP. and
 FOREST ELECTRIC CORP.,

Defendants.

-----X
 SHULMAN, J.

Defendant Battery Park City Authority ("BPCA") moves, pursuant to CPLR 3211(a) (7), to dismiss this negligence action because plaintiff failed to serve a notice of claim. Plaintiff does not deny that he failed to serve a notice of claim upon BPCA, but asserts that his service and filing the complaint within 90 days of the alleged accident is sufficient for him to maintain the action.

BPCA is a public benefit corporation organized under the laws of the State of New York. Public Authorities Act §1973. Pursuant to the Public Authorities Law §1984, a notice of claim must be served on BPCA as a condition precedent to commencing an action against it based in tort. The notice of claim requirement of General Municipal Law ("GML") §50-e has also been held to apply to all cases founded in tort against a public corporation. *Broadmeadow Lanes Inc. v Catskill Regional Off-Track Betting Corp.*, 151 AD2d 631 (2d Dept 1989).

Section 50-e(5) of the GML allows the court the discretion to grant leave to serve a late notice of claim. *McLean v Valley Stream Union Free School District*, 48 AD3d 571 (2d Dept 2008). The statute delineates several key factors to be taken into account by

the court in deciding whether to permit a plaintiff to file a late notice of claim. Among these factors are: (1) whether the municipality or agency acquired actual notice of the essential facts of the claim within 90 days after the claim arose, or a reasonable time thereafter; and (2) whether the delay would substantially prejudice the municipality in the defense. *Id.*; *March v Town of Wappinger*, 29 AD3d 998 (2d Dept 2006); *Martinez v West Hempstead School District*, 24 AD3d 557 (2d Dept 2005).

In the instant matter, BPCA was served with the complaint 87 days after the alleged accident. The complaint alleged the date and place of the accident, the nature of the accident and the nature of plaintiff's resultant injuries. Therefore, within the 90 day period specified by the statute, BPCA acquired actual notice from plaintiff of all of the essential facts of the subject incident. Under these circumstances, the court does not believe that BPCA is in any way prejudiced in defending the action. *Bussey v City of New York*, ____ AD3d ____, 854 NYS2d 912 (2d Dept 2008).

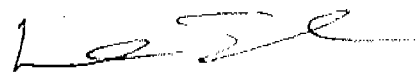
Although plaintiff has not specifically moved for leave to file a late notice of claim pursuant to GML §50-e, he has requested, in addition to asking that BPCA's motion be denied, that the court grant such other just and equitable relief as may be appropriate. Under the specific circumstances of the instant matter, the court believes that justice would best be served by allowing plaintiff to file and serve a late notice of claim.

Based on the foregoing, it is hereby

ORDERED that defendant Battery Park City Authority's motion to dismiss is granted unless plaintiff files and serves a notice of claim upon Battery Park City Authority within 20 days after service of a copy of this order with notice of entry.

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for plaintiff and BPCA.

DATED: New York, New York
May 22, 2008



HON. MARTIN SHULMAN, J.S.C.

FILED
MAY 27 2008
COUNTY CLERK'S OFFICE
NEW YORK