

Maldonado v NY City Hous. Auth.

2008 NY Slip Op 31870(U)

June 27, 2008

Supreme Court, New York County

Docket Number: 0602901/2007

Judge: Marilyn Shafer

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PRESENT:

PART 8

Justice

Index Number : 602901/2007

MALDONADO, STEVEN

vs.

NEW YORK CITY HOUSING AUTHORITY

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 602901-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

be read on this motion to/for

PAPERS NUMBERED

1, 2
3, 4
5

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

No file of Cross-Motion -
Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion.

*to dismiss The complaint is granted and
The cross motion is denied in accord with The annexed
Memorandum.*

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

FILED

JUL - 22 2008

COUNTY CLERKS OFFICE

Dated: 6/28/08

W. BLAKEY J.S.C.

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

NON-FINAL DISPOSITION
 REFERENCE

2]
SUPREME COURT OF The STATE OF NEW YORK — NEW YORK
COUNTY

PRESENT: HON. MARILYN SHAFER
Justice

PART 8

STEVEN MALDONADO,

INDEX NO. 602901/07

Plaintiff,

MOTION DATE _____

-against-

MOTION SEQ. NO. 001

NY CITY HOUSING, AUTHORITY,

MOTION CAL. NO. _____

Defendant.

The following papers, numbered 1 to 5, were read on this motion to dismiss the complaint and cross motion to allow late filing.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation	1,2
Notice of Cross-Motion, Affirmation	3,4
Affirmation In Reply – Exhibits	5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion is granted.

This is a motion by the NYC Housing Authority to dismiss a personal injury action as untimely or, in the alternative, for plaintiff's failure to comply with the mandates set forth in General Municipal Law § 50 (h)(5). Plaintiff cross moves to permit late service.

Steven Maldonado, was 16 years old in 2002 when he fell in a stairwell in a building owned by the Housing Authority. He filed a Notice of Claim on May 28, 2002.

The Authority noticed a § 50 (h) hearing for June 25, 2002. Plaintiff and his representative failed to appear. The hearing was rescheduled for July 19, 2002. Again, plaintiff and his representative failed to appear. When the Authority contacted plaintiff's counsel, in January 2003, they were advised that the firm had rejected the claim and closed the case.

No further activity occurred until, on August 28, 2007, plaintiff filed a summons and complaint and requested a § 50 (h) hearing. The Authority was served on September 6, 2007.

The Authority moves to dismiss arguing the service is untimely and the claim is time-barred. Plaintiff, through new counsel, cross-moves for an order permitting late service arguing he did not know a § 50 (h) hearing was needed or that his prior counsel had not served a summons and complaint.

The Housing Authority "may require any claimant hereunder to be examined as provided in § 50 (h) of the General Municipal Law, and all the provisions of such section shall apply to such examinations." Public Housing Law § 157 (2).

Where a demand for examination has been served as provided in subdivision two of this section no action shall be commenced against the city, county, town, village, fire district or school district against which the claim is made unless the claimant has duly complied with such demand for examination. (General Municipal Law § 50(h)(5)).

Public Housing Law § 157 (2) sets forth the statute of limitations for actions commenced against the New York City Housing Authority:

An action against an authority for damages for injuries to real or personal property, or for the destruction thereof, or for damages for personal injuries, alleged to have been sustained by reason of the negligence of, or by the creation

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or maintenance of a nuisance by said authority, or any member, officer, agent or employee thereof, **shall be commenced within one year and ninety days after the cause of action therefore shall have accrued**, provided that a notice of the intention to commence such action shall have been served upon the authority. All the provisions of section fifty-c of the general municipal law shall apply to such notice. The authority may require any claimant hereunder to be examined as provided in section fifty-h of the general municipal law, and all the provisions of such section shall apply to such examinations. (Emphasis supplied)

Pursuant to CPLR § 304, plaintiff had until June 30, 2003 to commence this action unless a tolling provision applies. Since plaintiff was born on October 26, 1986 and turned 18 on October 26, 2004, the limitation period was tolled to January 24, 2006. (CPLR § 105 (j); General Municipal Law § 50 (i), 50 (c) (5); CPLR § 208.)

Plaintiff's filing, on August 27, 2007, was a year and a half after the statute of limitations had run. Although the period of limitation is automatically tolled upon application for permission to file a late notice of claim, (Giblin v. Nassau County Medical Center, 61 NY 2d 67 [1984]), the period of limitations passed before plaintiff's filing.

Respondent correctly notes there is no legal authority supporting the proposition that a statute of limitations may be tolled after it has expired or to file a summons and complaint after the expiration of the statute of limitations. (Pierson v. City of New York, 56 NY2d 950 [1982]).

We have considered the other arguments of the parties and find them to be without merit.

Accordingly, it is

ORDERED that the motion by the Housing Authority to dismiss the complaint is granted; and it is further

ORDERED plaintiff's cross claim is denied.

This reflects the decision and order of this Court.

Dated: 6/27/08

MARILYN SHAFER
J.S.C.
(Signature)
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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NEW YORK
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