

Matter of Champ v City of New York

2010 NY Slip Op 30041(U)

January 5, 2010

Supreme Court, New York County

Docket Number: 117028/09

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 15

CHAMP, LOUISE A.

INDEX NO. 117028/09

MOTION DATE _____

- v -

THE CITY OF NEW YORK,
ETAL

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

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

12

3

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED

JAN 12 2010

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: 1/5/2010

[Signature]
HON. EILEEN A. RAKOWER

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: PART 5

-----X
In the Matter of the Application of,

LOUISE A. CHAMP,

seeking an order granting leave to file the proposed
notice of claim pursuant to GML §50-e

Petitioners,
- against -

Index No. 117028/09

THE CITY OF NEW YORK and the NEW YORK
CITY POLICE DEPARTMENT,

Respondents.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

DECISION/ORDER
Ser. No.: 001
FILED
JAN 12 2010
NEW YORK
COUNTY CLERK'S OFFICE

Petitioner brings this action alleging false arrest and false imprisonment as the result of an incident that occurred near the Willis Avenue Bridge in the County and State of New York on July 9, 2008. Petitioner now moves, by Order to Show Cause, for leave to serve a late notice of claim upon defendants the City of New York and the New York City Police Department (“City”), pursuant to §50-e(5). City opposes.

Petitioner, a “Special Patrolman” for the Business Integrity Commission¹, was driving to work around eleven thirty p.m. on the evening of her arrest. Petitioner claims that Department of Transportation Vehicles (“DOT”) were parked, and blocking, two lanes of the FDR near the 96th Street Exit. Petitioner waited behind the DOT vehicles until she saw a space open up so she could go around them. As she started to pull around the vehicles, an unmarked blue van, was attempting to change lanes at the same time. Petitioner came to a stop, and claims that the blue van came

¹Petitioner was licensed by the NYPD to patrol the “the New Fulton Fish Market,” as well as other areas.

within “an inch or two” of hitting her car.² The van, which contained two undercover police officers, followed petitioner over the Willis Avenue Bridge. The officers put on their sirens and petitioner pulled her car over. The officers approached petitioner’s car and asked her if she was drunk or “a diabetic.” One of the officers told petitioner to pull her car up to the gas station because she was being arrested on suspicion of drunk driving. At that point, Petitioner requested a Breathalyzer. According to Petitioner, the officers would not give her a Breathalyzer so she called 911. Petitioner was handcuffed before more officers arrived and was taken into custody sometime after midnight on July 10, 2008.

At the precinct, Petitioner took a Breathalyzer which showed 0.00 percent alcohol in her blood. Petitioner was charged with the following: Reckless Endangerment-1st Degree; Menacing-2nd Degree (with a weapon); Obstruction of Governmental Administration; Disorderly Conduct; Failure to Obey Police Officer; Moving from Land Unsafely; Illegal Signal; and Speed Violation. Petitioner was released from custody on July 11, 2008. Petitioner filed a Notice of Claim for false arrest and false imprisonment on October 8, 2008. All charges were dismissed against Petitioner on August 25, 2009.

Petitioner served a notice of claim for the malicious prosecution and abuse of process charges on November 27, 2009. Petitioner argues that such notice should now be deemed timely served because there will be no prejudice to City, as a result of the late filing. Petitioner points out that there was a complete investigation into the incident by both the District Attorney and the NYPD Licensing Division, petitioner’s employer at the time of the incident.³ As part of that investigation, Petitioner submitted a sworn affidavit approximately a month after the incident, stating her version of the events. Further, Petitioner claims that the notice of claim was only served a few days late. Petitioner’s attorney affirms that petitioner alerted him of the dismissal on time but that he filed late due to law office failure.

City, in opposition, concedes that Petitioner’s notice of claim, with respect to the false arrest/false imprisonment charges, is timely. However, City claims that petitioner does not offer a reasonable excuse for her failure to serve a timely notice

²Petitioner claims that after the van almost hit her, she “put my left arm out my window and give him my middle finger.”

³Petitioner’s Patrolman’s license was suspended as a result of the incident.

of claim as to the malicious prosecution and abuse of process claims.

A notice of claim must be filed within 90 days of when the claim arose.(General Municipal Law 50-e(1)(a)). The court has discretion to grant leave to file a late notice of claim within one year and ninety days of accrual. (General Municipal Law 50-e(5)). Key factors to be considered include whether the petitioner has demonstrated a reasonable excuse for failing to file such notice timely, whether the public corporation acquired actual notice of the essential facts within 90 days after the claim arose or within a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in defending on the merits. No one of these factors is determinative. (*Nieves v. New York Health and Hospitals Corp*, 34 AD3d 336 [1st Dept. 2006]).The burden to prove lack of prejudice rests with petitioner. (*Williams v. Nassau County Medical Center*, 6 NY3d 531 [2006]).

The court in *Grullon v. City of New York*, 222 AD2d 257[1st Dept. 1995]) found that “where the police department conducted an extensive investigation in which the District Attorney's Office joined, knowledge of the essential facts constituting the claims within the statutory period can be imputed to the City.”

Petitioner served a timely notice of claim alleging false arrest and false imprisonment on October 8, 2008. Petitioner then served City with a Notice of Claim as to the remainder of the allegations on November 27, 2009, four days after the date upon which the time to file expired. In light of the timely notice of claim alleging false arrest and false imprisonment, followed by an investigation of the charges by the District Attorney, City was on notice of the facts underlying the malicious prosecution and abuse of process allegation. “Therefore, the City cannot claim that it was prejudiced by the delay, which, in any event, was not a lengthy one.” (*Grullon* at 257). The absence of a reasonable excuse is not fatal, especially in light of the lack of prejudice to the City. (see *Chattergoon v. New York City Housing Authority*, 197 AD2d 397[1st Dept. 1993]).

Wherefore it is hereby

ORDERED that petitioner’s application for leave to file a late notice of claim is granted; and it is further

ORDERED that the notice of claim served on November 27, 2009, is deemed timely served *nunc pro tunc*.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: January 5, 2010



EILEEN A. RAKOWER, J.S.C.

FILED
JAN 12 2010
NEW YORK
COUNTY CLERK'S OFFICE