

**Williams v New York City Health & Hosps. Corp.**

2011 NY Slip Op 31423(U)

May 20, 2011

Sup Ct, NY County

Docket Number: 113655/10

Judge: Emily Jane Goodman

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

EMILY JANE GOODMAN

PRESENT: \_\_\_\_\_

PART 17

Justice

Williams, Andrea

INDEX NO.

113655/10

MOTION DATE

- v -

MOTION SEQ. NO.

001

NY#H#E

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were 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

*petition*  
**THIS MOTION IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM DECISION**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: \_\_\_\_\_

5/20/11

J.S.C.  
EMILY JANE GOODMAN

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK I.A.S. PART 17

-----X  
ANDREA WILLIAMS,

Petitioner,

Index No. 113655/10

-against-

NEW YORK CITY HEALTH AND  
HOSPITALS CORPORATION,

Respondent.

-----X  
EMILY JANE GOODMAN, J.S.C.:

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

While in the custody of the New York City Department of Correction (DOC),  
Petitioner, Ms. Andrea Williams (Williams), was incarcerated at Bellevue Hospital's  
prison ward. Williams, then 23, and, ironically, supposedly on a protective watch, was  
sexually abused (twice on the same night). The assailant, an employee of New York City  
Health and Hospitals Corp. (HHC), was prosecuted, convicted and incarcerated.  
Petitioner now moves for leave to file a late notice of claim against HHC. Respondent  
moves to dismiss on the grounds of untimeliness. In addition to the instant proceeding,  
Williams has also commenced a civil rights action in the U.S. District Court for the  
Southern District of New York. New York City Corporation Counsel represents  
Respondent in both courts.

Williams believed the assailant to be an employee of NYC and, acting pro se, and  
allegedly acting on instructions she received from HHC staff members, she filed her

claim with the New York City Office of the Comptroller. She later retained counsel who filed a second timely Notice of Claim on the Office of the Comptroller soon after the attacks on her.

HHC, however, is a separate corporation, not bound by service on the City's Comptroller (see Scantlebury v. NYC HHC, 4 NY3d 606 [2005] ["The City of New York and HHC are separate entities for purposes of a notice of claim" so service on city comptroller had no effect]). It is undisputed that this action was commenced against HHC 15 days beyond the one year and 90 day statutory time limit (see Unconsolidated Laws §7401[2]; GML §50-e[5]).

Petitioner's new counsel argues persuasively that HHC was on notice as soon as the criminal events transpired because they took place in its facility, its personnel completed a rape kit, and the agency cooperated with the District Attorney in the criminal prosecution of the employee. In other words, because HHC was always on notice, it was not prejudiced by the filing delay, and therefore leave should be granted even after the last permissible date to file an action or seek leave for late filing.

Respondent's boiler plate argument which refers to the "alleged" assault, despite the conviction of its employee (who, it is alleged had similar behavior in his background), claims that late notice would "deprive [it] of the statutory entitlement to conduct a prompt investigation of the elements of the claims while the facts were fresh," is rejected since it can hardly be denied that HHC was immediately aware of, or on notice of, the events and

did participate in an investigation. Nevertheless, the problem for Williams in this otherwise strong case is that being on notice of the occurrence is not equal to the filing of a Notice of Claim. Williams would still have to overcome the obstacle now in her path, i.e., lack of service of Notice of Claim on HHC, even though there is ample notice of the underlying attacks. Petitioner's confusion as to which agency to sue when she was self-represented and incarcerated, or which agency employed her attacker, is easily understood, but the second notice of claim served upon New York City, and not HHC, was by an attorney Ms. Williams retained.

Plaintiff's new counsel now raises a theory of equitable estoppel which was not raised in its motion, but only in reply. Generally a reply is for the limited purpose of responding to the opposition to the underlying motion, and not raising new arguments, which the opposing party has no opportunity to respond (see Sanford v 27-29 W 181<sup>st</sup> St Assoc, Inc., 300 AD2d 250 [1st Dept 2002]). However, the Court permitted Respondent to file a sur-reply, which has been considered and the contents of both shall become part of the record.

Equitable estoppel, which is not often established, requires specific conduct or omission by a respondent that deceives or misinforms an injured party or leads to her detrimental reliance (see, e.g., Bender v NYCHHC, 38 NY2d 662 [1976] [Court of Appeals, for the first time, applied the doctrine of equitable estoppel to a government agency but remanded for further elucidation of facts required to support estoppel]);

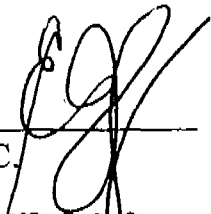
Francese v. Sears Roebuck & Co., 185 AD2d 225 [2d Dept 1992] [no evidence of misleading conduct to support an estoppel]). Ms. Williams may have originally relied, to her detriment, on HHC staff's instructions to file with the Comptroller, but the same cannot be said for her attorney who re-filed incorrectly. The cases upholding equitable estoppel, relied upon by Petitioner (see, e.g., Bethel v NYCTA, 215 AD2d 206 [1st Dept 1995] [conduct was calculated to mislead or discourage timely filing of notice of claim]; Conquest Cleaning Corp. v New York City School Construction Authority, 279 AD2d 546 [2d Dept 2001] [project manager's action's lulled plaintiff into sleeping on its rights and not filing a notice of claim]; Chait v Town of Thompson, 105 AD2d 578 [3d Dept 1984] [town's actions caused plaintiff to believe that her tax payments were current and therefore court allowed filing of notice of claim, nunc pro tunc]; Reed v City of Syracuse, 309 AD2d 1195 [4th Dept 2003] [county was estopped from asserting failure to comply with notice of claim where county failed to acknowledge ownership of vehicle registered to a fictitious driver until after expiration of statute of limitations]) do not apply, since any reliance by Petitioner was negated by her original lawyer's subsequent actions/inactions, which the present counsel cannot remedy. Nor does the Court have any authority or discretion to extend the time, despite the equities and interests of justice.

Accordingly, Petition to extend time to file Notice of Claim must be and is denied and the proceeding is dismissed, without costs and disbursements.

**This constitutes the Decision, Order and Judgment of the Court.**

Dated: May 20, 2011

ENTER:

  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).