

Ahmetaj v New York City Hous. Auth.

2011 NY Slip Op 32608(U)

October 4, 2011

Supreme Court, New York County

Docket Number: 109042/11

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.
Justice

PART 52

FIONA AHMETAJ
- v -
NEW YORK CITY HOUSING AUTHORITY

INDEX NO. 10904211
MOTION DATE _____
MOTION SEQ. NO. 001
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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed decision.

FILED
OCT 06 2011
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/4/11 _____
e.g.
CYNTHIA S. KERN *J.S.C.*

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: Part 52

-----x
FIONA AHMETAJ, an Infant by her Father and Natural
Guardian, DHURIM AHMETAJ,

Petitioner,

Index No. 109042/11

-against-

DECISION/ORDER

THE NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----x
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u> </u>
Replying Affidavits.....	<u> </u>
Exhibits.....	<u>3</u>

FILED
OCT 06 2011
NEW YORK
COUNTY CLERK'S OFFICE

Petitioner brought the instant petition to serve a late Notice of Claim for her action to recover damages for personal injuries she allegedly sustained when she fell off the monkey bars in a park located at 1295 Amsterdam Avenue, New York, New York on April 14, 2011. For the reasons set forth below, her petition is granted.

The relevant facts are as follows. On April 14, 2011, petitioner alleges she sustained injuries when she fell off the monkey bars at a park located at 1295 Amsterdam Avenue, near West 123rd Street, New York, New York which was owned and maintained by defendant the New York City Housing Authority ("NYCHA"). Petitioner now moves for leave to serve a late

Notice of Claim less than one month after the ninety day period has expired.

Prospective plaintiffs must serve a Notice of Claim against a municipal entity within ninety days after the claim arises. *See* General Municipal Law (“GML”) §50-e(1)(a). However, courts have broad discretion to grant leave to serve a late Notice of Claim pursuant to GML §50-e(5). In determining whether to grant leave, the court must consider whether the petitioner had a reasonable excuse for her delay, whether the delay prejudiced the municipality’s defense and whether the municipality acquired “actual knowledge of the essential facts constituting the claim” within 90 days after the claim arose or within a reasonable time thereafter. *See* GML §50-e(5); *Strauss v. New York City Transit Authority*, 195 A.D.2d 322 (1st Dept 1993). It is plaintiff’s burden to prove each of these elements, including lack of prejudice to the defendant. *See Delgado v. City of New York*, 39 A.D.3d 361 (1st Dept 2005). Although no one factor is dispositive, the court must give particular consideration to whether the defendant acquired actual knowledge of the claim within the ninety day statutory period or shortly thereafter. *See Justiniano v. New York City Housing Authority Police*, 191 A.D.2d 252 (1st Dept 1993).

Considering all the above factors together, petitioner’s motion to serve a late Notice of Claim is granted. Petitioner alleges that she timely electronically filed a Notice of Claim against NYCHA but only recently became aware of the fact that NYCHA does not accept an electronically-filed Notice of Claim, which is a reasonable excuse for the delay in serving the Notice of Claim. *See Olmo v. City of New York*, 178 A.D.2d 197 (1st Dept 1991) (holding that petitioner’s mistake of law excuse was legally sufficient as “within six days of learning of the mistake of law, petitioner’s counsel sought leave to file a late notice of claim”).

Moreover, NYCHA has acquired actual knowledge of the facts forming the basis of the

claim within the statutory period or shortly thereafter. Petitioner filed the instant petition with her proposed Notice of Claim approximately three weeks after the expiration of the statutory period which is a reasonable time thereafter. *See* GML §50-(e)(5); *see also* *March v. Wappinger*, 29 A.D.3d 998 (2nd Dept 2006) (delay of eleven months was held to be a reasonable time after expiration of 90 day period). Thus, NYCHA was notified of petitioner's claims shortly after the incident occurred.

Furthermore, NYCHA has not been prejudiced by the slight delay in filing the Notice of Claim. As it has received actual knowledge of petitioner's claim only three weeks after the 90-day deadline for timely filing the Notice of Claim, it has had the opportunity to conduct an investigation of the incident in a reasonably timely manner. The three week delay coupled with the fact that NYCHA acquired actual knowledge within a reasonable amount of time makes it unlikely that respondents were prejudiced by the delay. *See* *Silva v City of New York*, 246 A.D.465 (1st Dept 1998).

Finally, NYCHA's argument that it did not acquire actual knowledge of the facts constituting petitioner's claims because her Notice of Claim was ambiguous is without merit. Under § 50-e(2) of the General Municipal Law, the Notice of Claim must state sufficient information to enable a municipality to investigate the claimant's claim. *See* *Brown v. City of New York*, 95 N.Y.2d 389 (2000). To that end, "courts should focus on the purpose served by a Notice of Claim: whether based on the claimant's description municipal authorities can locate the place, fix the time and understand the nature of the accident." *Id.* The Notice of Claim must state the place of occurrence with enough particularity to permit a respondent to locate the site of the alleged defect and conduct a proper investigation of the site. *Caselli v. City of New York*, 105

