

**Matter of Mercado v City of New York**

2012 NY Slip Op 33992(U)

January 5, 2012

Supreme Court, Bronx County

Docket Number: Index No. 260602/11

Judge: Julia I. Rodriguez

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SUPREME COURT STATE OF NEW YORK  
COUNTY OF BRONX TRIAL TERM- PART 27

JAN 10 2012

Present: JULIA I. RODRIGUEZ

Index No.: 260602/11

In the Matter of the Application of

JEANELIN MERCADO, as Proposed Administratrix  
of the Estate of JORGE MERCADO,

Petitioners,

DECISION & ORDER

Noticed on 8/11/11  
Submitted on 11/3/11

-against-

CITY OF NEW YORK and NEW YORK CITY  
HOUSING AUTHORITY,

Defendants

Recitation, as required by CPLR 2219 (a), of the papers considered in review of Petitioner's OSC for leave to file late notice of claim:

<u>Papers Submitted</u>	<u>Numbered</u>
OSC & Exhibits	1
Opposition	2-3
Reply	4

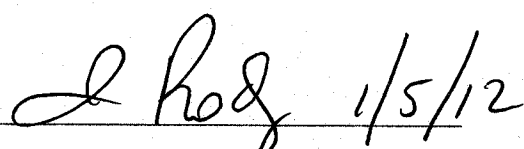
Upon the foregoing papers, Petitioner's motion for an Order granting permission to file a late notice of claim pursuant to General Municipal Law §50-e (5) is hereby **granted to the extent provided herein**. Petitioner commenced this application on behalf of her deceased father, Jorge Mercado, who allegedly passed away as a result of an accident that occurred on Defendant's premises on December 28, 2010.

A Notice of Claim is a statutory device that creates a condition precedent to the right to bring an action. This statutory precondition serves "to enable municipalities to pass upon the merits of a claim before the initiation of litigation and thereby forestall unnecessary litigation." *Alford v. City of New York*, 115 A.D.2d 420, 421 (1<sup>st</sup> Dept. 1985). The purpose underlying the notice of claim provision in General Municipal Law §50-e is to protect the municipality from unfounded claims and to assure it 'an adequate opportunity . . . to explore the merits of the claim

while information is still readily available.’ *Testa v. City of New York*, 304 N.Y. 440 (1952); also see *Camacho v. City of New York*, 187 A.D.2d 262 (1<sup>st</sup> Dept. 1992). It should not be used as a device to defeat the rights of persons with legitimate claims. *Id.* at 263. General Municipal Law §50-e (5) vests with the courts the discretion to permit late filing of a Notice of Claim as long as the extension does not exceed the time limit for the commencement of the action. *Hall v. City of New York*, 1A.D.2d 254 (1<sup>st</sup> Dept. 2003) such “... discretion to extend the time for filing a notice of claim, is remedial in nature, and so should be liberally construed.” *Matter of Santana v. City of New York*, 183 A.D.2d 665 (1<sup>st</sup> Dept. 1992).

As the condition of the location of the accident is transient in nature and the time to commence the action has not passed, the court finds that there is no prejudice to Defendants. However, as the Defendant City of New York has submitted evidence that it did not own the subject premises and Petitioner did not oppose or refute evidence, Petitioner’s motion for an Order granting permission to file a late notice of claim pursuant to General Municipal Law §50-e (5) is hereby **granted only to the extent** that it may file as against Defendant New York City Housing Authority.

Dated: January 5, 2012

  
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 Hon. Julia I. Rodriguez, J.S.C.