

Matter of Thompson v City of New York

2014 NY Slip Op 32048(U)

August 1, 2014

Sup Ct, New York County

Docket Number: 400519/14

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: FREED

PART 5

HON. KATHRYN FREED Justice

JUSTICE OF SUPREME COURT

THOMPSON, AARON

INDEX NO.

400519/14

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

- v -
CITY OF NEW YORK

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

AUG 05 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/1/14

AUG - 1 2014


HON. KATHRYN FREED J.S.C.
JUSTICE OF SUPREME COURT

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):

FILED

AUG 05 2014

COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 5

-----X

In the Matter of the Claim of
Aaron Thompson,

Petitioner,

-against-

DECISION/ORDER
Index No.: 400519/14
Seq. No.: 001

THE CITY OF NEW YORK,

Defendant.

-----X

HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
PETITION AND NOTICE OF CLAIM.....	.1,2 (Exs. A-E)
ANSWERING AFFIDAVIT.....3.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Pro se petitioner Aaron Thompson moves, pursuant to General Municipal Law ("GML") § 50-e, for an order extending his time to file a notice of claim against respondent The City of New York ("the City"). After a review of the motion papers, the court file, and all relevant statutes and case law, the Court **denies** petitioner's motion.

Factual and Procedural Background:

Petitioner, a former inmate, alleges that he is entitled to damages from the City because the City's Department of Corrections ("the NYCDOC") miscalculated his jail sentence, resulting in his incarceration for 10 months and 24 days longer than he should have been.

The undisputed facts are set forth in petitioner's sworn proposed notice of claim, which sounds in negligence and false imprisonment.¹ Petitioner essentially asserts that, when he was transferred from the custody of the NYCDOC to the custody of the New York State Department of Corrections ("the NYSDOC"), the NYCDOC provided the NYSDOC with incorrect information regarding the length of his incarceration.

In the proposed notice of claim, petitioner alleged that, in May of 2007, the NYCDOC miscalculated that he was entitled to a credit of 771 days against his 5-year state prison sentence and advised the New York State Department of Corrections of this incorrect fact. Ex. A.² He claimed that, as of October of 2007, he had accumulated 1104 days of credit against his state sentence. *See Proposed Notice of Claim*, at par. 1.

On January 23, 2012, petitioner complained about the improper calculation of his credit by filing a grievance with the NYCDOC. Ex. B. Petitioner's next complaint about the improper credit was made to the DOC on May 6, 2013.

On September 20, 2013, the NYCDOC issued a "Jail Time Certification" reflecting that he had a credit of 1104 days. Ex. A.

On January 7, 2014, petitioner learned that his parole eligibility date on the 2007 sentence was August 23, 2008. Ex. D. However, he had remained in prison until he was released on July 21, 2009. Ex. E.

Petitioner now moves to file a late notice of claim against the City and petitioner opposes.

¹Although petitioner brought this motion by means of a petition, the petition was unsworn and thus the substantive facts set forth therein will not be considered in determining this motion.

²All references are to exhibits to petitioner's proposed notice of claim.

Positions of the Parties:

Petitioner argues that his motion to file a late notice of claim should be granted because the City “was in possession of sufficient facts that was [sic] the cause of this claim to investigate and prepare any defense as early as September 20, 2013, or when [he] filed [his] grievance in January 2013.” Proposed Notice of Claim, at par. 9.

In opposition to the motion, the City argues that petitioner’s motion must be denied because petitioner’s time to file a notice of claim has expired. The City argues that petitioner had 90 days from May of 2007, when the alleged miscalculation was made, to file a notice of claim. Alternatively, the City asserts that petitioner had 90 days from January 23, 2012, when he filed a grievance, to file a notice of claim. In either event, asserts the City, petitioner’s application must be denied as untimely since he filed his proposed notice of claim on or about March 12, 2014, by which time the one year and 90-day period in which to seek an extension of time to file a notice of claim had expired.

Conclusions of Law:

“In [GML] § 50-e, the Legislature enacted a protocol for serving a notice of claim as a condition precedent to a suit [founded upon tort] against a public corporation. Section 50-e (1) requires that the notice be served within 90 days after the claim arises. The Legislature, however, gave courts discretion to extend the time and devised criteria for determining whether to grant extensions. Section 50-e, the late notice statute, directs the court to consider, in particular, whether within 90 days or a reasonable time thereafter the public corporation . . . acquired actual knowledge of the facts underlying the claim. In deciding whether to grant an extension, the court must also

consider a host of factors, including infancy and whether allowing late filing would result in substantial prejudice to the public corporation.” *Williams v Nassau Co. Med. Ctr.*, 6 NY3d 531, 535 (2006) (*citation omitted*). This Court does not have the discretion to grant leave to file a late notice of claim more than one year and 90 days after the accrual of the claim. *See* GML § 50-e (5); *Tuitt v City of New York*, 85 AD3d 640 (1st Dept 2011).

A claim generally accrues “when all of the elements required to allege a cause of action come into being.” Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C214:2. The papers submitted do not provide sufficient information for this Court to determine whether a potential claim accrued in 2007, as they do not reflect precisely when petitioner learned of the alleged miscalculation. What is clear, however, is that petitioner knew about the miscalculation by January 23, 2012, on which date he filed a grievance regarding the alleged miscalculation with the NYCDOC. Ex. B. Therefore, petitioner’s potential claim accrued no later than January 23, 2012.

Since the petitioner’s potential claim, sounding in either negligence or false imprisonment, was founded upon tort, he had 90 days from January 23, 2012, the accrual date of the said potential claim, in which to file his notice of claim. *See* GML § 50-e (1)(a). Having failed to do so, he had one year and 90 days from the accrual date in which to seek leave to file a late notice of claim. *See* GML § 50-e (5). However, plaintiff failed to seek such leave during that period, which expired in April of 2013. Thus, this Court is without discretion to grant petitioner leave to file a late notice of claim and his motion must be denied. *See Tuitt, supra* at 641.

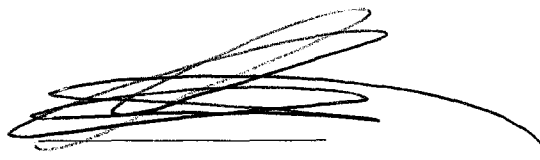
Therefore, in accordance with the foregoing, it is hereby:

ORDERED that the motion by petitioner Aaron Thompson seeking leave to file a late notice of claim is denied; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: August 1, 2014

ENTER,



Hon. Kathryn E. Freed,
J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**

FILED

AUG 05 2014

COUNTY CLERK'S OFFICE
NEW YORK