

<b>Matter of Dickerson v City of New York</b>
2014 NY Slip Op 32189(U)
July 28, 2014
Sup Ct, Queens County
Docket Number: 705038!13
Judge: Phyllis Orlikoff Flug
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**ORIGINAL**

SHORT-FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. PHYLLIS ORLIKOFF FLUG, IA Part 9  
Justice

IN THE MATTER OF THE APPLICATION  
OF JAMEL DICKERSON,

Index Number..705038/13

Motion Date...2/04/14

Petitioner(s),

Motion Cal.

Number..... 42

For leave to serve and file an  
Amended Notice of Claim or, in the  
alternative, a Late Notice of  
Claim as

Sequence No... 1

-against-

THE CITY OF NEW YORK AND THE NEW  
YORK CITY POLICE DEPARTMENT,

Respondent(s).

**FILED**

JUL 29 2014

COUNTY CLERK  
QUEENS COUNTY

The following papers numbered 1 to 4 read on this motion

Order to Show Cause	1 - 2
Affirmation in Opposition	3
Reply Affirmation	4

Petitioner, Jamel Dickerson, moves *inter alia* to file a late notice of claim on respondents, the City of New York (hereinafter "City") and the New York City Police Department (hereinafter "NYPD").

Petitioner seeks to commence an action to recover damages for personal injuries allegedly sustained beginning on June 15, 2011 as a result of being falsely arrested and subsequently imprisoned and prosecuted in the County of Queens, City and State of New York. Petitioner was released from incarceration on January 16, 2013 and all charges against him were dismissed on May 1, 2013.

A Notice of Claim must be served within ninety days after the claim arises (GML 50-e[1][a]).

Petitioner served a Notice of Claim on Respondents on June 3, 2013 which states that the judge handling petitioner's criminal case told petitioner that he "shouldn't have been arrested" and that petitioner is seeking to "sue for the days [he] was in jail."

Because petitioner's notice of claim does not specifically state that petitioner was making claims for false arrest, false imprisonment, malicious prosecution and civil rights violations, petitioner now seeks to amend the Notice of Claim to specifically include those claims.

Respondents, however, admit that the June 3, 2013 Notice of Claim was sufficient to assert causes of action for false arrest and false imprisonment.

Nevertheless, the June 3, 2013 Notice of Claim is untimely with respect to those causes of action which accrued on January 16, 2013 when petitioner was released from confinement (See Ragland v. New York City Hous. Auth., 201 A.D.2d 7, 9 [2d Dept. 1994]). As such, petitioner's application is deemed an application to serve a late notice of claim with respect to the claims of false arrest and imprisonment.

With respect to the claims of civil rights violations and malicious prosecution, a court has the discretion to allow a party to correct a good faith mistake, omission, irregularity, or defect in the notice of claim if it would not prejudice the other party (See GML 50-e[6]). However, GML 50-e[6] does not permit amendments to a notice of claim that are substantive in nature (Zwecker v. Clinch, 279 A.D.2d 572, 574 [2d Dept. 2001]).

Petitioner's attempt to assert new causes of action that were not identified in the original notice of claim do not fall within the purview of GML 50-e[6] (See Carter v. City of New York, 38 A.D.3d 702, 703 [2d Dept. 2007]; White v. New York City Hous. Auth., 288 A.D.2d 150 [1st Dept. 2001]). As such, petitioner's application will be deemed an application to serve a late notice of claim with respect to the claims for assault, malicious prosecution and civil rights violations as well.

"In exercising its discretion to grant leave to serve a late notice of claim, the court must consider various factors, including whether (1) the claimant has demonstrated a reasonable excuse for failing to serve a timely notice of claim, (2) the claimant was an infant, or mentally incapacitated, (3) the public corporation [or its attorney or its insurance carrier] acquired actual knowledge of the facts constituting the claim within 90 days of its accrual or

a reasonable time thereafter, and (4) the delay would substantially prejudice the public corporation in defending on the merits" (Keyes v. City of New York, 89 A.D.3d 1086 [2d Dept. 2011] (citing GML 50-e[5]; Iacone v. Town of Hempstead, 82 A.D.3d 888 [2d Dept. 2011]; Barnes v. New York City Health & Hosps. Corp., 69 A.D.3d 934 [2d Dept. 2010]; Chambers v. Nassau County Health Care Corp., 50 A.D.3d 1134, 1135 [2d Dept. 2008])).

Petitioner's ignorance of the notice of claim requirement is not a reasonable excuse for the delay (See Pico v. City of New York, 8 A.D.2d 287, 288 [2d Dept. 2004] (citing Gilliam v. City of New York, 250 A.D.2d 680 [2d Dept. 1998]; Lamper v. City of New York, 215 A.D.2d 484 [2d Dept. 1995])). Petitioner's late retention of counsel likewise fails to demonstrate a reasonable excuse (See Bollerman v. New York City Sch. Construction Auth., 272 A.D.2d 469, 470 [2d Dept. 1998]; Ealey v. City of New York, 204 A.D.2d 720, 720-21 [2d Dept. 1994])).

Nevertheless, failure to set forth a reasonable excuse is not fatal to the application if the municipality had actual knowledge and there is an absence of prejudice (See Rivera-Gualpa v. County of Nassau, 40 A.D.3d 1001, 1002 [2d Dept. 2007]; Nardi v. County of Westchester, 18 A.D.3d 521, 522 [2d Dept. 2005]; Hendershot v. Westchester Medical Ctr., 8 A.D.3d 381, 382 [2d Dept. 2004])).


With respect to petitioner's causes of action for false arrest and imprisonment, petitioner has established that respondents had actual knowledge within a reasonable time after the cause of action arose and are not prejudiced by delay. Respondents admit that the June 3, 2013 Notice of Claim, which was served only 6 weeks and 6 days after the expiration of the 90 day notice of claim period, provided sufficient notice of the causes of action for false arrest and false imprisonment. Moreover, respondents acknowledged, in a letter to petitioner dated September 19, 2013, that they were able to fully investigate the subject causes of action.

To the extent petitioner seeks to assert a claim for assault occurring on June 15, 2011, the statute of limitations has expired (See GML 50-i[1]). The court is without discretion to permit filing of a late notice of claim once a statute of limitations has expired (See Pierson v. City of New York, 56 N.Y.2d 950 [1982])).

With respect to petitioner's claim for malicious prosecution and civil rights deprivations, petitioner has failed to demonstrate that respondents had actual knowledge within a reasonable time after the claim arose. The notice of claim filed on June 3, 2013 does not mention these causes of action, and petitioner fails to allege any basis upon which respondents would have actual knowledge of these claims.

Accordingly, petitioner's application is granted to the extent that petitioner shall serve a notice of claim on respondents for the claims of false arrest and false imprisonment no later than September 12, 2014. The application is denied in all other respects.

July 28, 2014



---

J.S.C.

**HON. PHYLLIS ORLIKOFF JUDGE**