Jones v City of New York
2015 NY Slip Op 32376(U)
November 6, 2015
Supreme Court, Bronx County
Docket Number: 244222/14
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
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ROBERT JONES,

Plaintiff(s),

- against -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, AND NEW YORK CITY HEALTH & HOSPITALS CORPORATION,

Defendant(s).
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DECISION AND ORDER

Index No: 244222/14

Petitioner moves seeking an order granting renewal and reargument of this Court's order dated April 15, 2015, which granted respondent NEW YORK CITY HEALTH AND HOSPITALS CORPORATION's (HHC) motion seeking vacatur of this Court's prior order which, *inter alia*, granted petitioner's application for leave to serve a belated notice of claim upon HHC. Upon granting HHC's motion, the Court also, after considering the merits of petitioner's application seeking leave to file a belated notice of claim upon HHC, denied petitioner's application. Petitioner asserts that renewal of the Court's order is warranted so as to allow the Court to consider, *inter alia*, medical evidence substantiating petitioner's incapacity following the accident and malpractice alleged, which incapacity was medically unsupported on the prior motion. Petitioner also seeks reargument of the

Court's order on grounds that the Court erred when it held that in support of his motion to file a late notice of claim upon HHC, petitioner failed to establish a reasonable excuse for such failure. Petitioner avers that such failure was not fatal to his application. Moreover, petitioner contends that the Court further erred in holding that (1) HHC had not acquired knowledge of the facts constituting his medical malpractice claim within 90 days of its accrual and; (2) that petitioner failed to establish the absence of any prejudice by the failure to file a timely notice of claim upon HHC.

HHC opposes petitioner's motion for renewal insofar as it claims that the purportedly new medical evidence was readily available to petitioner and known to him upon the prior motion. Even if renewal is granted, HHC nevertheless contends that the evidence submitted in support of the same fails to substantiate petitioner's incapacity during the relevant period - the 90 days subsequent to the accident alleged - and that in fact it calls his incapacity into question . HHC opposes reargument, averring that in holding that petitioner neither established knowledge by HHC of the facts constituting the claim within 90 days of its occurrence or the absence of any prejudice to HHC by failing to file a timely notice of claim, the Court neither misapprehended the facts nor misapplied the law.

For the reasons that follow hereinafter, petitioner's motion is denied.

The instant action is for alleged personal injuries as a result of negligence and medical malpractice. Within his notice of claim as against all other respondents except HHC, petitioner alleges that on September 5, 2013, he was caused to fall off his bicycle as a result of a potholes located upon the road which he traversed. As a result of the foregoing, petitioner alleges that respondents were negligent and that said negligence caused his accident and the injuries that resulted therefrom. Within his proposed notice of claim as against HHC, petitioner alleges that as result of the foregoing, he was medically treated at Lincoln Medical Center, an HHC facility, where he underwent several surgical procedures to treat his injuries. Petitioner alleges that the medical treatment he received constitutes medical malpractice, which malpractice caused him further injury.

On April 15, 2015, this Court denied petitioner's application seeking leave to interpose a belated notice of claim upon HHC. Specifically, the Court, after detailing the applicable law, held that while the alleged claim against HHC accrued on about September 5, 2013, petitioner did not serve his notices of claim upon HHC until September 8, 2014, almost a year later. Thus, this Court held that in order to obtain the relief

requested, petitioner was required to establish (1) a reasonable excuse for his failure to serve a timely notice of claim; (2) that HHC acquired actual knowledge of the essential facts constituting the claim within 90 days after it arose, or a reasonable time thereafter; and (3) that the delay in filing the notice of claim would not substantially prejudice HHC in maintaining a defense on the merits (*Jusino v New York City Housing Authority* 255 AD2d 41, 47 [1st Dept 1999]; *Gerzel v City of New York*, 117 AD2d 549, 550 [1st Dept 1986]; *Morrison v New York City Health and Hospitals Corp.*, 244 AD2d 487, 487 [2d Dept 1997]).

This Court concluded that petitioner's claim of physical incapacity as an excuse for his failure to file a timely notice of claim was unsupported by medical evidence (*Casale v City of New York*, 95 AD3d 744, 744 [1st Dept 2012] ["Petitioners failed to offer a reasonable excuse for not serving a timely notice of claim. Indeed, petitioners failed to submit any medical evidence supporting their assertion that the injured petitioner's physical condition prevented them from timely serving a notice of claim."]; *Mandia v County of Westchester*, 162 AD2d 217, 218 [1st Dept 1990] ["Petitioners failed to submit a medical affidavit by a physician or otherwise to substantiate their claim that the

delay in service was due to physical incapacity."]), such that his excuse was legally incognizable as a matter of law.

The Court then held that the fact that HHC and defendant THE CITY OF NEW YORK's (the City) employees were aware that petitioner had been involved in an accident and treated at HHC's hospital was insufficient to confer the requisite notice under the applicable case law because GML § 50-e(5) requires that a defendant acquire knowledge of the essential facts forming the basis of the negligence claim within 90 days of its occurrence, not simply knowledge that an accident/incident occurred (*Kim v City of New York*, 256 AD2d 83, 84 [1st Dept 1998] [Court held that knowledge that petitioner was injured when instructed by a teacher to move a large piece of plywood, was not tantamount to notice of petitioner's claim that respondents "were negligent in not providing petitioner with the mechanical means to move the plywood and otherwise in their supervision of petitioner's activities."]; *Chattergoon v New York City Housing Auth.*, 161 AD2d 141, 142 [1st Dept 1990] ["What satisfies the statute is not knowledge of the wrong. What the statute exacts is notice of the claim (internal quotation marks omitted)."]; *Bullard* at 450-451 [1st Dept 1986]).

Lastly, the Court concluded that since the primary purpose of the notice of claim requirement is to permit the municipality

to conduct a prompt investigation of the facts and circumstances out of which a claim arose while information is still fresh and readily available (*O'Brien v City of Syracuse*, 54 NY2d 353, 358 [1981]); *Adkins v City of New York*, 43 NY2d 346, 350 [1977]) and that a delay is often prejudicial insofar as the passage of time often "prevent[s] an accurate reconstruction of the circumstances existing at the time the accident occurred" (*Vitale v City of New York*, 205 AD2d 636, 636 [2d Dept 1994] [internal quotation marks omitted]), it was beyond cavil that the nine-month delay in serving HHC with a notice of claim resulted in prejudice.

Petitioner's Motion to Renew

Petitioner's motion to renew is denied insofar as the evidence which he urges the Court to consider, while new to the Court, is hardly new to him and could have been submitted on the prior motion. Moreover, petitioner offers no excuse for his failure to previously submit the same; such omission generally fatal. Even under the now well accepted interests of justice standard, petitioner's new submission - affidavits from himself, a doctor and from a friend - fail to warrant renewal because said affidavits would not alter the Court's prior decision.

It is well settled that a motion to renew

> shall be based upon new facts not offered on the prior motion that would change the prior determination or shall

> demonstrate that there has been a change in the law that would change the prior determination; and . . . shall contain reasonable justification for the failure to present such facts on the prior motion(CPLR § 2221[e][2], [3]).

Thus,

> [a]n application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew, and, therefore, not made known to the Court. Renewal should be denied where a party fails to offer a valid excuse for not submitting the additional facts upon the original application

(*Foley v Roche*, 68 AD2d 558, 568 [1st Dept 1979]; *see also Healthworld Corporation v. Gottlieb*, 12 AD3d 278, 279 [1st Dept 2004]; *Walmart Stores, Inc. v United States Fidelity and Guaranty Company*, 11 AD3d 300, 301 [1st Dept 2004]; *Linden v Moskowitz*, 294 AD2d 114, 116 [1st Dept 2002]; *Basset v Bando Sangsa Co.*, 103 AD2d 728, 728 [1st Dept 1984]. Renewal is a remedy to be used sparingly and granted only when there exists a valid excuse for failing to submit the newly proffered facts on the original application (*Beiny v Wynyard*, 132 AD2d 190, 210 [1st Dept 1987]). In fact, renewal should be denied where the party fails to offer a valid excuse for not submitting the additional facts upon the original application (*Burgos v City of New York*, 294 AD2d 177, 178 [1st Dept 2002]; *Chelsea Piers Management v Forest Electric*

Corporation, 281 AD2d 252, 252 [1st Dept 2001]), and "the remedy [is unavailable] where a party has proceeded on one legal theory on the assumption that what has been submitted is sufficient, and thereafter sought to move again on a different legal argument merely because he was unsuccessful upon the original application" (*Foley* at 568).

Notwithstanding the foregoing, courts have nevertheless carved an exception to the general rule and a motion to renew will be granted even when all requirements for renewal are not met (*Bank One v Mui*, 38 AD3d 809, 811 [2d Dept 2007], *abrogated on other grounds by* 95 A.D.3d 1147 [2d Dept 2012]; *Strong v Brookhaven Memorial Hospital Medical Center*, 240 AD2d 726, 726 [2d Dept 1997]). As such, motions to renew can be granted even when the newly offered evidence was in fact known and available to the movant but never provided to the Court (*Tishman Construction Corporation of New York v City of New York*, 280 AD2d 374, 376 [1st Dept 2001]; *Trinidad v Lantigua*, 2 AD3d 163, 163 [1st Dept 2003]; *Mejia v Nanni*, 307 AD2d 870, 871 [1st Dept 2003]; *U.S. Reinsurance Corporation v Humphreys*, 205 AD2d 187, 192 [1st Dept 1994]; *J.D. Structures, Inc. v Waldbum*, 282 AD2d 434, 436 [2d Dept 2001]; *Sorto v South Nasaau Community Hospital*, 273 AD2d 373, 373-374 [2d Dept 2000]; *Cronwall Equities v International Links Development Corp.*, 255 AD2d 354, 355 [2d Dept

1998]; *Goyzueta v Urban Health Plan, Inc.*, 256 AD2d 307, 307 [2d Dept 1998]; *Liberty Mutual Insurance Company v Allstate Insurance Company*, 237 AD2d 260, 262 [2d Dept 1997]). Renewal with new evidence previously known and available to movant - a departure from precedential case law and the statute - is, thus, warranted if the interests of justice and substantial substantive fairness so dictate (*Trinidad* at 163; *Mejia* at 871; *Metcalfe v City of New York*, 223 AD2d 410, 411 [1st Dept 1996]; *Scott v Brickhouse*, 251 AD2d 397, 397 [2d Dept 1998]; *Strong* at 726; *Goyzueta* at 307). Stated differently, a motion to renew can be granted, in the exercise of the court's discretion, even when the new evidence proffered was readily available to the moving party, such that all requirements necessary for renewal have not been met - including the failure to proffer an excuse for failing to provide previously available and known evidence with the previous motion - if considering the new evidence changes the outcome of the Court's prior decision (*Trinidad* at 163; *J.D. Structures, Inc.* at 436).

In *J.D. Structures, Inc.*, the court granted a renewal of its prior when renewal after considering previously available evidence, but which while known to the movant, it did not submit on the original motion (*id.* at 435-436). The court had initially denied plaintiff's motion seeking summary judgment on grounds of

an agreement according said relief because plaintiff failed to include evidence relative to the debt owed, such evidence dispositive on the motion (*id*). On renewal, plaintiff tendered evidence of the debt owed averring that the failure to provide the same on the prior motion was the mistaken belief that the motion would be decided favorably without such evidence (*id.*). The court granted renewal despite plaintiff's failure to submit previously available evidence, which was known to plaintiff on grounds that an excuse had been proffered for the failure to submit the same and because the new evidence, warranted judgment in plaintiff's favor (*id.*). Simiarly, in *Trinidad*, the court granted renewal when the same was premised upon the submission of a previously known and available expert affidavit despite the fact that no excuse was proffered for the failure to previously submit the same (*id.* at 163).

Here, merely arguing that the new facts were previously not before the Court, petitioner submits three affidavits, which he urges the Court to consider on renewal. Said affidavits - he avers - establish - under prevailing law - that his physical and mental incapacity prevented him from timely filing a notice of claim against HHC.

The first affidavit is from B. Andrew Farah (Farah), a psychiatrist, who states, in pertinent part, as follows. On May

18, 2015, he examined petitioner and based on that examination and a review of petitioner's medical records while at HHC's hospital, concludes that as a result of the accident and malpractice alleged, petitioner is afflicted with major depressive disorder. As a result the same, Farah opines, that from the date of the instant accident and continuing for a year thereafter, petitioner was physically and psychiatrically disabled, said disability preventing him from conducting his activities of daily living. Farah further opines that petitioner was unable, due to a lack of the mental and emotional capacity, to seek out an attorney for purposes of legal representation for a year after the instant accident.

The second affidavit is from Jalal Bailey (Bailey), who states, in pertinent part as follows. Bailey resides in the same home as petitioner, and subsequent to petitioner's accident assumed responsibility for petitioner's care. Since petitioner's release from HHC's hospital, Bailey has spent seven hours a day with petitioner. As a result, Bailey asserts that he has had to provide petitioner with assistance in performing nearly all of his daily activities. Bailey further states that petitioner is depressed, has low energy, low motivation, and has frequent crying spells.

Petitioner also submits an affidavit, wherein he states, in pertinent part, as follows. For the first two months following his discharge from HHC's hospital in September 2013, because of his injuries, he seldom left his home; only leaving his bed for medical appointments and physical therapy. Thereafter, and currently, leaving his home was very difficult, requiring assistance. As a result, petitioner states that he rarely leaves his home and does so only to visit his mother and his doctors.

Based on the foregoing renewal is unwarranted for several reasons. First, contrary to petitioner's assertion, the facts offered are not new and were clearly available to him on the prior motion. It is well settled that an application for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but were not then known to the party seeking leave to renew, and, therefore, not made known to the court (*Foley* at 568; *see also Healthworld Corporation* at 279; *Walmart Stores, Inc.* at 301 [1st Dept 2004]; *Linden* at 116; *Basset* at 728). Even then, renewal should be denied where a party fails to offer a valid excuse for not submitting the additional facts upon the original application, meaning an explanation for ignorance with respect to the existence of the materials proffered on renewal (*Foley* at 568). Here, the affidavits proffered on renewal - particularly Farah

and Bailey's - merely establish petitioner's medical condition and his purported inability to leave his home after he was discharged from HHC's hospital. These are hardly new facts insofar as petitioner was aware of his medical condition on the prior motion and could have submitted medical support on the prior motion. Similarly, to the extent that the affidavits seek to establish that petitioner was confined to his home, these facts were obviously known to him. Certainly, he was aware that Bailey could have attested to the same, and thus, could have submitted his affidavit on the prior motion as well. Accordingly, the facts submitted were not unknown to petitioner and his motion is denied for this reason alone Second, the instant motion is denied insofar as petitioner offers no excuse whatsoever for his failure to previously apprise the Court about the facts upon which renewal is based.

Lastly, while motions to renew can be granted even when the newly offered evidence was in fact known and available to the movant but never provided to the court (*Tishman Construction Corporation of New York* at 376; *Trinidad* at 163; *Mejia* at 871; *U.S. Reinsurance Corporation* at 192; *J.D. Structures, Inc.* at 436; *Sorto* at 373-374; *Cronwall Equities* at 355; *Goyzueta* at 307; *Liberty Mutual Insurance Company* at 262), such exception warrants renewal only when the interest of justice so warrant, meaning

that considering the new evidence changes the outcome of the court's prior decision (*Trinidad* at 163; *J.D. Structures, Inc.* at 436). Here, renewal is sought to have the Court consider evidence that in petitioner's view establishes his medical incapacity during the year following his accident. Such incapacity, petitioner avers, preventing him from timely filing a notice of claim. Thus, whereas this Court previously held that petitioner's excuse for failing to file a timely notice of claim was unreasonable in that the excuse was medical and unsubstantiated, petitioner now seeks to have the Court consider Farah's affidavit, averring that same establishes his medical incapacity for the relevant period. Petitioner argues that this evidence requires the Court to reverse its prior holding on this issue. This contention is without merit.

While it is true that when the reason for the failure to timely file a notice of claim is physical incapacity, such incapacity must be corroborated by medical evidence establishing the same (*Casale* at 744; *Mandia* at 218), it is also well settled that whether the excuse proffered is reasonable is within the court's discretion and a court is free to determine reasonableness based on the record as a whole *Casale* at 744; *Sarti v City of New York*, 268 AD2d 285, 285 [1st Dept 2000] [Petitioner's application for leave to file a late notice of

claim denied when her reason for the failure to timely file was a lacked of knowledge of her son's death. Court rejected her excuse insofar as "nowhere [did] petitioner actually describe her attempts to investigate."]). Here, it is the conflict created by petitioner's new affidavits which dooms his application for renewal. To be sure, while he submits Farah's affidavit establishing that petitioner was unable, due to a lack of the mental and emotional capacity, to seek out an attorney for purposes of legal representation for a year after the instant accident, the foregoing is belied by petitioner's own affidavit wherein he states that despite his injuries, after he left the hospital, he left his home to visit his doctors and for physical therapy. Accordingly, here, petitioner's reasonable excuse for failing to file a timely notice of claim is physical and mental incapacity, the same purportedly preventing him from leaving his home, and, thus, preventing him from retaining counsel. However, the record evinces that petitioner was not totally confined to his home and thus, could have retained counsel during the 90 days following his accident. Accordingly, even with the purportedly new evidence, petitioner's excuse is nevertheless unreasonable, warranting adherence to the Court's prior decision on this issue and, therefore not warranting renewal in the interests of justice.

Petitioner's Motion to Reargue

Petitioner's motion to reargue is hereby denied insofar as it is untimely. Moreover, petitioner nevertheless fails to establish that in denying his application for leave to serve a late notice of claim upon HHC the Court misapprehended the facts and/or misapplied the law. In fact, contrary to petitioner's assertion, petitioner failed to establish any of the elements warranting the leave requested as promulgated by GML § 50-e(5) and the relevant case law.

CPLR § 2221(d)(1), prescribes the reargument of a prior decision on the merits and states that such motion

> shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.

Accordingly,

> [a] motion for reargument, addressed to the discretion of the Court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principal of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided

(*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; *see also*, *Fosdick v Town of Hemstead*, 126 NY 651, 652 [1891]; *Vaughn v*

Veolia Transp., Inc., 117 AD3d 939, 939 [2d Dept 2014]). Thus, because reargument is not a vehicle by which a party can get a second bite at the same apple, a motion for reargument preludes a litigant from advancing new arguments or taking new positions which were not previously raised in the original motion (*Foley* at 567).

A motion to reargue, must be made within 30 days after service of a copy of the underlying order with notice of entry (CPLR § 2221[d][3]; *Perez v Davis*, 8 AD3d 1086, 1087 [4th Dept 2004]; *Pearson v Goord*, 290 AD2d 910, 910 [3rd Dept 2002]).

Here, the instant motion must be denied as untimely. To be sure, HHC served a copy of this Court's prior order dated April 15, 2015, with Notice of Entry upon petitioner on April 27, 2015. However, the instant motion was not served upon all parties until July 6, 2015, more than 60 days after petioner was served with this Court's order. "A motion is an application for an order. A motion on notice is made when a notice of the motion or an order to show cause is served" (CPLR § 2211). Thus, a motion is deemed made when it is served, and not when it is filed (*Aqeel v Tony Casale, Inc.*, 44 AD3d 572, 573 [1st Dept 2007]; *Gazes v Bennett*, 38 AD3d 287, 288 [1st Dept 2007]). Here, then, where reargument must be sought within 30 days of service of the underlying order with notice of entry (CPLR § 2221[d][3]; *Perez* at 1087; *Pearson*

at 910), the instant motion is untimely and, must be denied. Contrary to petitioner's assertion, while at his behest, the Court did issue an order on May 20, 2015, clarifying its prior order, it is clear that the order from which reargument is sought is the order issued in April. This is because the Court's most recent order was in no way substantive.

Notwithstanding the foregoing, reargument would nonetheless be denied on the merits because it is clear that the Court neither misapprehended the facts nor misapplied the law. Saliently, petitioner avers that the Court erred in denying his application to file a belated notice of claim upon HHC because held - at least in petitioner's view - that petitioner's failure to establish a reasonable excuse for the failure to timely file a notice of claim was dispositive. This is clearly a misreading of the Court's decision since the Court found that petitioner failed to establish any of the elements required for purposes of allowing the belated filing of a notice of claim. In fact, the Court agrees, as it must, with petitioner's contention that for purposes of leave to file a late notice of claim, no single element as prescribed by GML § 50-e(5), is by itself dispositive, least of all a reasonable excuse for the failure to timely file a notice of claim (*Cicio v City of New York*, 98 AD3d 38, 39 [1st Dept 1983] ["In a series of cases, this court has emphatically

rejected such arguments, holding that the statutory amendments to subdivision 5 of section 50-e of the General Municipal Law are to be liberally construed and that the absence of an acceptable excuse is not necessarily fatal. Rather, all relevant factors are to be considered, including the prejudice to the municipality and whether it obtained actual knowledge within the 90-day statutory period or shortly thereafter."]; *see also Rush v County of Suffolk*, 35 AD3d 619, 620 [2d Dept 2006]).

Here, however, not only did the Court find that petitioner failed to establish a reasonable excuse for the failure to timely file a notice of claim, but it also held that he failed to establish that HHC acquired notice of the facts constituting the claim within 90 days of the alleged malpractice or soon thereafter and that HHC was not prejudiced by the delay in filing a timely notice of claim. Notably, petitioner argues that the Court erred in holding that HHC did not acquire knowledge of the facts constituting his medical malpractice claim despite the fact that HHC's hospital provided the treatment giving rise to the alleged malpractice. He then cites cases like *Gibbs v City of New York* (22 AD3d 717 [2d Dept 2005]) and *Ayala v City of New York* (189 AD2d 632 [1st Dept 1993]), which are inapposite and don't avail him. Unlike, *Gibbs* and *Ayala*, where because the claims were premised on motor vehicle accidents those Court's

held that the municipal defendants acquired actual knowledge of the facts underlying the claims because its employees were involved in the accidents alleged (*Gibbs* at 719 ["In this case, HHC acquired timely actual notice of the underlying facts of the claim because the driver and attendants of the ambulance, employees of Coler-Goldwater Hospital, an HHC facility, performed the acts complained of. Furthermore, the progress record of the hospital contained the plaintiff's allegation that she was injured when the driver of the ambulance braked and the wheelchair in which she was seated moved forward. Thus, HHC was also aware that the plaintiff was claiming that the ambulance driver and its attendants were at fault in the happening of this accident" (internal citations omitted).]; *Ayala* at 633 ["Respondent HHC had actual knowledge of the events concerning the claim because the HHC ambulance driver performed the acts complained of. HHC was on notice of the circumstances surrounding the collision because the driver, its employee, had first-hand knowledge of them. Moreover, the police report of the incident reads in part that "Driver of Vehicle 2 stated he had the green light when above ambulance had struck him". The police officer's notations reveal that there was an allegation by Mr. Ayala that he was properly proceeding through a green light when the ambulance struck him. Thus, HHC was also aware that

petitioner Ayala was assigning fault to the ambulance driver. In addition, HHC does not deny that it was aware of the underlying facts from its own accident reports" (internal citations omitted).]), here, where the allegation is medical malpractice, *Williams v Nassau County Med. Ctr.* [6 NY3d 531 [2006] ["We disagree with plaintiff's suggestion that because defendants have medical records, they necessarily have actual knowledge of the facts constituting the claim. Merely having or creating hospital records, without more, does not establish actual knowledge of a potential injury where the records do not evince that the medical staff, by its acts or omissions, inflicted any injury on plaintiff during the birth process."]) controls. Accordingly, that petitioner received medical treatment at HHC's hospital and records were created evincing the same does not confer the requisite knowledge upon HHC. To hold otherwise, would, as posited by HHC turn the law on its head and obviate the need for a notice of claim requirement in medical malpractice cases.

Based on the foregoing - that HHC had no knowledge of the facts constituting the claim until petitioner sought leave to serve a belated notice of claim against it, some nine months after the events alleged transpired. The Court also properly held that petitioner failed demonstrate the absence of prejudice.

Thus, it is clear that the Court neither misapprehend the facts nor misapplied the law. It is hereby

ORDERED that HHC serve a copy of this Order with Notice of Entry upon all parties within thirty days (30) hereof.

This constitutes this Court's decision and Order.

Dated : ~~April 14~~ Nov 6, 2015
Bronx, New York

MITCHELL J. DANZIGER, J.S.C.