

DeJesus v City of New York
2016 NY Slip Op 31071(U)
March 24, 2016
Supreme Court, New York County
Docket Number: 161879/2015
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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JAIME DEJESUS,

Petitioner,

Index No. 161879/2015

-against-

**Decision, Order, and
Judgment**

CITY OF NEW YORK,

Respondent.
-----X

JOAN B. LOBIS, J.S.C.:

Petitioner files this application for leave to file a late notice of claim. The incidents in question – two separate assaults on petitioner while he was incarcerated at the Manhattan Detention Complex, in Housing Area 5 West – occurred on August 21, 2014 and August 25, 2014. He states that on August 21, 2014, around 10:00 p.m., two fellow inmates assaulted him and caused serious injuries requiring treatment at Bellevue Medical Center. After his return to MDC petitioner alleges that he requested that he not be sent back to Housing Area 5 West. MDC denied his request for transfer and on August 25, 2015 another inmate assaulted him, resulting in additional injuries. Petitioner claims respondent’s failure to supervise the inmates who assaulted him, to intervene in the assault in a timely fashion, and to grant his request for transfer to a different housing area caused the assaults and resulting injuries. Petitioner filed the petition on November 17, 2015, and served it on November 24, 2015. Respondent opposes the motion. For the reasons below, the Court grants the petition.

Petitioner says his petition is timely and thus the Court has discretion to evaluate his request. He argues that respondent had actual knowledge of the underlying facts within the

ninety-day limitations period. The assault occurred at MDC, which respondent owns, operates, and controls. The prison was required to generate an incident report for each of the two assaults,¹ and the incident reports contain the date, time and location of the occurrences, the identities of the assailants and the correction officers, the fact that petitioner was injured and received medical treatment at the correctional facility and at Bellevue, and the names of the medical staff who treated petitioner. In addition, respondent has petitioner's medical reports. Petitioner alleges that MDC prepared and filed additional records that contain pertinent information, including logbook entries for Housing Area 5 West and notices pertaining to the other inmates' infractions. Third, the infraction reports trigger prompt investigation, and in the course of the mandated investigation MDC interviewed petitioner, the corrections officers, and all witnesses. Because all the above information is at respondent's disposal, petitioner states, no prejudice exists. In support, he provides copies of the two infraction reports and of the pertinent directives. He submits a copy of the notice of claim he served on respondent, identical to the proposed notice of claim he filed with this proceeding. Finally, he includes an affidavit of merit by petitioner.

In opposition, respondent states that the application is untimely because petitioner served the notice of claim on it on November 17, 2015 without its permission, and petitioner did not serve this petition until November 24, 2015, five days after the limitations period expired. Even if the Court considers the petition, respondent asserts, the application should be denied because petitioner has not provided a reasonable excuse for the delay, it did not have knowledge of the

¹ When petitioner commenced this proceeding he had not received copies of the reports and investigation records, which he had recently requested, so except for the infraction reports he asserts the details of his notice and lack of prejudice arguments on information and belief, relying on MDC's mandatory regulations.

events in question, and prejudice would ensue if the petition is granted. It contends that petitioner's statements regarding notice are speculative and that the creation of incident reports at MDC is insufficient to impute knowledge to respondent. It states "mere knowledge that an assault occurred . . . can in no way be construed as providing the City with knowledge that an actionable wrong occurred." Aff. in Opp. at ¶ 18. It is petitioner's burden, respondent contends, to show lack of prejudice due to the delay and he has not satisfied this burden. Respondent argues the danger that conditions have changed also shows prejudice.

Petitioner's reply challenges respondent's contentions. He stresses that his lack of a reasonable excuse for his delay is not fatal and that courts have broad discretion to overlook this factor where there is no prejudice. He asserts that respondent's reliance on case law regarding actual notice is misplaced, as those cases did not involve the actions of the respondent's own employees or situations in which the municipal employees had direct knowledge of the incident. In more similar situations, he states, courts tend to allow the late notice.

Initially, the Court addresses the threshold issue of timeliness. Respondent has calculated the timeline incorrectly. Although petitioner did not serve respondent until November 24, 2015, a few days after the statutory deadline, a special proceeding is commenced by filing, see Alvarez v. New York City Hous. Auth., 97 A.D.3d 668, 668-69 (2nd Dep't 2012)(finding that late notice of claim was timely based on filing date although concluding that petition should be denied); Benejan v. New York City Transit Auth., 306 A.D.2d 1, 1 (1st Dep't 2003)(involving Article 78 petition), and petitioner filed his petition on November 17. Thus, the petition is timely and the Court can address the application.

General Municipal Law § 50-e(1)(a) provides that a party who intends to sue the City must file a notice of claim within ninety days of the occurrence in question. If the claimant does not file the notice of claim within this time frame, General Municipal Law § 50-e(5) provides that a claimant has an additional year within which to commence a proceeding for leave to file a late notice of claim. The reviewing court has wide discretion in reviewing the application. Richardson v. New York City Hous. Auth., 136 A.D.3d 484, 484 (1st Dep’t 2016). Relevant factors are whether a reasonable excuse exists for the delay, whether the municipality had actual notice of the claim within the ninety-day period, and whether the municipality would suffer substantial prejudice due to the delay. Kelle B. v. New York City Health & Hosp. Corp., 122 A.D.3d 495, 496 (1st Dep’t 2014). “The presence or absence of any one factor is not determinative . . . and the absence of a reasonable excuse is not fatal.” Dubowy v. City of New York, 305 A.D.2d 320, 321 (1st Dep’t 2003)(citations omitted). Finally, the purpose of the notice of claim requirement is “to protect the municipality from unfounded claims and to ensure that it has an adequate opportunity to explore the merits of the claim while information is still readily available,” Porcaro v. City of New York, 20 A.D.3d 357, 357 (1st Dep’t 2005), and is not “a device to frustrate the rights of individuals with legitimate claims.” Id. at 358.

In light of this standard, the Court grants the petition. As stated, the lengthy delay and the lack of excuse for the untimeliness are relevant but not dispositive, particularly where the respondent has notice of the underlying facts and does not show substantial prejudice. See Richardson v. New York City Hous. Auth., 136 A.D.3d 484, -- (1st Dep’t 2016)(avail at 24 N.Y.S.3d 308, 310). Here, petitioner has shown that respondent had notice of the underlying facts.

The incident reports provide the date and time of the alleged assaults, the identities of the guards who witnessed the fights, their observations regarding the incidents in question and the identities of the inmates, and respondent does not dispute petitioner's statement that based on its own regulations MDC would have a record of petitioner's medical treatment and copies of the pertinent hospital records or that due to the infractions MDC would have conducted a prompt investigation and interviewed the parties to the fights, the correction officers, and all identifiable witnesses. Thus, all the pertinent facts were at its disposal.

Respondent's argument that notice of a potential claim to a municipal agency is not equivalent to notice to the municipality itself lacks merit. "A report of an investigation by the municipal agency charged with tortious conduct may constitute proof that the municipality and its agency did in fact have actual notice of the facts constituting the claim." Johnson v. City of New York, 302 A.D.2d 463, 464 (2nd Dep't 2003); see Thomas v. City of New York, 118 A.D.3d 537, 538 (1st Dep't 2014)(police report sufficient to provide notice). Moreover, the fact that municipal employees who work for a particular agency witnessed the dispute, in itself, has been held to constitute notice in some cases, see, e.g., Renelique v. New York City Hous. Auth., 72 A.D.3d 595, 596 (1st Dep't 2010). Contrary to respondent's contention, it had knowledge of more than that an assault occurred on August 21, 2014. Instead, as described above, it had knowledge of enough details to alert it to the possibility of a claim of negligence.

As for prejudice, citing Williams v. Nassau County Med. Ctr., 6 N.Y.3d 531 (2006), respondent argues that it is petitioner's burden is to show lack of prejudice. Where, as here, "the City acquired timely knowledge of the essential facts of the claim," however, petitioner "has met

his initial burden of showing a lack of prejudice.” Jordan v. City of New York, 41 A.D.3d 658, 660 (2nd Dep’t 2007). Respondent has not rebutted this showing with its assertions that the delay can result in the inability to identify witnesses and to examine them while their memories are fresh, or that the underlying conditions may have changed. Respondent does not show or even state that any of these problems exist, however. As petitioner has shown, moreover, the reports contain the names of several individuals relevant to respondent’s investigation, and witnesses would have been identified and interviewed promptly during the investigation of the infractions. In addition, respondent has not articulated a way in which the conditions at issue may have changed. See Pendley v. City of New York, 119 A.D.3d 410, 410 (1st Dep’t 2014)(leave properly granted where condition of the stairs on which petitioner sustained his injury had not been repaired).

Based on the above, therefore, it is

ADJUDGED that the petition for leave to serve a late notice of claim is granted;
and it is further

ORDERED that petitioner shall commence an action and purchase a new index number in the event a lawsuit arising from this notice of claim is filed.

Dated: *Mar. 24*, 2016

ENTER:



JOAN B. LOBIS, J.S.C.