Matter of Rodriguez v Metropolitan Transp. Auth.

2016 NY Slip Op 31525(U)

August 10, 2016

Supreme Court, New York County

Docket Number: 162629/2015

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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In the Matter of the Application of
ANDRES RODRIGUEZ, VII and DAMARIZ RODRIGUEZ,

Petitioners,

Index No. 162629/2015

- against -

Decision and Judgment

METROPOLITAN TRANSPORTATION AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY CAPITAL CONSTRUCTION COMPANY, NEW YORK CITY TRANSIT AUTHORITY, LONG ISLAND RAILROAD and CITY OF NEW YORK,

Respondents.

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HON. MICHAEL D. STALLMAN, J.:

Petitioner and his wife seek leave to serve late notices of claim upon respondents, which allege claims for personal injuries, violations of the Labor Law, and a derivative claim. Respondents oppose the petition.

According to the petition, on December 16, 2014, petitioner Andres Rodriguez VII, an operating engineer, was allegedly injured during construction on the East Side Access Project. Petitioner, an employee of Frontier-Kemper Constructors, Inc. (Frontier-Kemper), claims that he was standing on a mantrip heading into the East Side Access Tunnel at the entrance located at East 45th Street and Madison Avenue in Manhattan. The

mantrip allegedly came to a complete stop at or about East 55th Street inside the tunnel, when a locomotive rear-ended the mantrip, causing petitioner's body to be jolted from one side to the other.

Petitioner claims that he reported the accident "to his foreman, Andres Rodriguez, V, and an MTA Supervisor." (Schaktman Affirm. ¶ 4.) Petitioner also claims that his employer, the general contractor on the project, conducted an investigation of the accident.

DISCUSSION

Under General Municipal Law § 50-e (5), courts have discretion to grant an extension of time for service of a late notice of claim.

> "In deciding whether a notice of claim should be deemed timely served under General Municipal Law § 50–e(5), the key factors considered are 'whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in its defense. Moreover, the presence or absence of any one factor is not determinative.'"

(*Plaza v New York Health & Hosps. Corp. [Jacobi Med. Ctr.]*, 97 AD3d 466, 467 [1st Dept 2012] [internal citations omitted]; *Matter of Strauss v New York City Tr. Auth.,* 195 AD2d 322 [1st Dept 1993].) "Proof of actual knowledge, or lack thereof, 'is an important factor in determining whether the defendant is substantially prejudiced by such a delay.'" (*Plaza*, 97 AD3d at 471; *see*

e.g. Padilla v Department of Educ. of City of N.Y., 90 AD3d 458 [1st Dept 2011]["The most important factor that a court must consider in deciding such a motion is whether corporation counsel, . . . 'acquired actual knowledge of the essential facts constituting the claim within the time specified'"].)

Here, petitioner did not set forth a reasonable excuse for not serving a timely notice of claim. Petitioner's counsel states that, up until April 8, 2015, petitioner's medical benefits were being paid by workers' compensation "and he was unaware that he had any type of case to pursue." (Shaktman Affirm. ¶ 13.) However, "[l]ack of awareness of the possibility of a lawsuit is not a reasonable excuse for delay in filing a notice of claim." (*Meyer v County of Suffolk*, 90 AD3d 720, 721 [2d Dept 2011]; *Casias v City of New York*, 39 AD3d 681, 683 [2d Dept 2007] [petitioner's ignorance of her right to sue the City while receiving Workers' Compensation benefits is not a reasonable excuse for her failure to protect her rights].)

In any event, "the absence of a reasonable excuse is not, standing alone, fatal to the application." (*Matter of Porcaro v City of New York*, 20 AD3d 357, 358 [1st Dept 2005] [internal citations omitted].) Nevertheless, petitioners have not demonstrated that respondents Metropolitan Transportation Authority (MTA), New York City Transit Authority (NYCTA), and City of New York acquired actual notice of the essential facts of

petitioners' claims within 90 days after December 16, 2014, or a reasonable time thereafter.

"[K]nowledge of the facts underlying an occurrence does not constitute knowledge of the claim. 'What satisfies the statute is not knowledge of the wrong. What the statute exacts is notice of 'claim'" (*Chattergoon v New York City Hous. Auth.*, 161 AD2d 141, 142 [1st Dept 1990].) "In order to have actual knowledge of the essential facts constituting the claim, the public corporation must have knowledge of the facts that underlie the legal theory or theories on which liability is predicated in the notice of claim; the public corporation need not have specific notice of the theory or theories themselves." (*Matter of Whittaker v New York City Bd. of Educ.*, 71 AD3d 776 [2d Dept 2010]; *see Matter of Corwin*, 2016 WL 4016914, at *7, 2016 NY App Div LEXIS 5519 at *19 [Andrias and Richter, JJ., dissenting] ["the municipal defendant must have knowledge of the essential facts that underlie the legal theory or theories upon which liability is predicated"].) "The statute contemplates not only knowledge of the facts, but also how they relate to the legal claim to be asserted." (*Carpenter v City of New York*, 30 AD3d 594, 595 [2d Dept 2006].)

Here, petitioners obtained documents from respondent Metropolitan Transportation Authority Capital Construction Company (MTA Capital

Construction) through a Freedom of Information Law request. (Shaktman Affirm., Ex B.) The fact that MTA Capital Construction was in possession of these documents does not, in itself, establish that the other respondents acquired knowledge of the facts that underlie the legal theory or theories on which liability is predicated in the notice of claim. The City, the MTA, and the NYCTA are all distinct and separate entities, and they are all distinct and separate from MTA Capital Construction. The City is a municipal corporation, while the MTA and the NYCTA are public benefit corporations. (Public Authorities Law §§ 1201, 1263.) MTA Capital Construction is a subsidiary of the MTA. (*See* Public Authorities Law § 1265-b [1].) Public Authorities Law § 1266 (5) states that the MTA's subsidiaries are distinct entities and shall be individually subject to suit, and provides that "[t]he employees of any such subsidiary corporation, except those who are also employees of the [MTA], shall not be deemed employees of the [MTA]."

Consequently, knowledge of the information contained in the documents in the possession of MTA Capital Construction cannot be imputed to the City, the NYCTA, or the MTA.[1] Therefore, leave to serve a late notice of claim is denied as to the City, the NYCTA, and the MTA.

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[1] The result might have been different if there were proof that MTA Capital Construction acted as an agent for any one of the respondents. (*See Matter of Casale v City of New York*, 95 AD3d 744, 745 [1st Dept 2012] [accident report prepared by general

As discussed above, MTA Capital Construction and the LIRR are subsidiaries of the MTA. (*See* Public Authorities Law § 1265-b [1].) Public Authorities Law § 1276 (6) states, "The provisions of this section which relate to the requirement for service of a notice of claim shall not apply to a subsidiary corporation of the authority." Because MTA Capital Construction and the LIRR are subsidiary corporations of the MTA, it is unnecessary to serve a notice of claim upon them. (*See Andersen v Long Is. R.R. Auth.*, 59 NY2d 657; *see also Burgess v Long Is. R.R. Auth.*, 172 AD2d 302 [1991]; *Stampf v Metro. Transp. Auth.*, 57 AD3d 222 [1st Dept 2008].) Instead, Public Authorities Law § 1276 (1) requires that the complaint allege that a pre-suit demand was made upon the subsidiary at least 30 days prior to commencement of suit against the subsidiary, and that the subsidiary "neglected or refused to make an adjustment or payment thereof." (*See Andersen v Long Is. R.R.*, 59 NY2d 657.)

Therefore, leave to serve a late notice of claim upon MTA Capital Construction and the LIRR is also denied.

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contractor/construction manager, did not give the City of New York actual knowledge of the essential facts constituting the claim, as there is no evidence that the general contractor/construction manager was an agent of the City].)

CONCLUSION

Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: August 16, 2016
New York, New York

ENTER:

J.S.C.
HON. MICHAEL D. STALLMAN