

Jordan v New York City Hous. Auth.
2018 NY Slip Op 32411(U)
March 13, 2018
Supreme Court, Richmond County
Docket Number: 100811/2016
Judge: Jr., Orlando Marrazzo
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RICHMOND COUNTY CLERK

2018 MAR 19 P 2:07

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
DELOD JORDAN,

Plaintiff(s),

-against-

THE NEW YORK CITY HOUSING
AUTHORITY.

Defendant(s).

DECISION/ORDER

DCM PART 21

HON. ORLANDO MARRAZZO, JR.

DECISION AND ORDER

Index No.: 100811/2016

Motion No. 1

The following papers numbered 1 to 3 were fully submitted on the 13th day of March, 2018

Papers
Numbered

Defendant's Notice of Motion to Dismiss the Complaint, with Supporting Papers and Exhibits, dated December 1, 2017	1
Plaintiff's Affirmation In Opposition with Supporting Papers and Exhibits, dated January 25, 2018.....	2
Defendant's Reply, dated September 6, 2017	3

Upon reading the aforementioned documents and after oral argument on the 13th Day of March, 2018, the Court finds as follows:

Defendant's motion to dismiss the complaint pursuant to CPLR §§ 3211(a)(7) and 3212 for failure to serve a timely Notice of Claim upon the New York City Housing Authority (NYCHA) as required by General Municipal Law §50-e(1) and Public Housing Law §157(2) is denied.

Plaintiff alleges that on July 19, 2015, he slipped and fell on an interior staircase located at 476 Richmond Terrace, Staten Island, New York, due to the presence of liquid on the stairs. The subject building is part of a NYCHA residential housing complex known as Richmond Terrace.

Thereafter, on or about October 17, 2016, plaintiff commenced this action by filing a Summons and Complaint. The Complaint alleges that a Notice of Claim was duly filed with the New York City Comptroller's Office on September 21, 2015. The Complaint further alleges that on September 21, 2015, plaintiff "presented in writing" to the Comptroller of NYCHA.

Defendant contends that a Notice of Claim was never served directly on NYCHA within 90 days of the date of the alleged incident, nor did NYCHA ever receive notice of the claim prior to being served with the Summons and Complaint more than one year after the date of the alleged incident as required by General Municipal Law §50-e(1) and Public Housing Law §157(2). Defendant further argues that as a result, a hearing pursuant to General Municipal Law § 50-h and Public Housing Law §157(2) was never held.

It is well settled that General Municipal Law §50-e was not meant as a sword to cut down honest claims, but merely as a shield to protect municipalities against spurious ones (*see, DeLeonibus v Scognamillo*, 183 AD2d 697, 583 NYS2d 585 [App

Div. 2nd Dept. 1992].)

Further, the Notice of Claim statute should be applied flexibly so as to balance two countervailing interests: protecting municipal defendants from stale or frivolous claims and ensuring that a meritorious case is not dismissed for a ministerial error (*See, Lomax v The New York City Health and Hospitals Corporation*, 262 AD2d 2, 690 NYS2d 548 [App Div. 1st Dept. 1999].)

Here, there is no question that the Notice of Claim dated September 17, 2015 was timely served and filed. The question before the court is whether that Notice is valid against NYCHA, since it lists the City of New York rather than NYCHA in the caption portion of the notice and was served upon the Comptroller of the City of New York.

In (*Robb v New York City Housing Authority*, 71 AD2d 100, 420 NYS2d 291 [2nd Dept. 1979]), the court granted leave to file a late Notice of Claim on the New York City Housing Authority when the claimant did in fact file a timely Notice of Claim on the New York City Comptroller, under the misapprehension that it was sufficient to both the City and the City Housing Authority (*See, Simmons v New York City Housing Authority*, 161 AD2d 377, 555 NYS2d 325 [1st Dept. 1990].)

In fact, it is well established that a court may, in its discretion, allow a mistake, irregularity, or defect in a Notice of Claim to be corrected as long as that mistake,

irregularity, or defect was made in good faith and the public corporation was not prejudiced thereby (*See, Bowers v City of New York*, 147 AD3d 894, 47 NYS3d 209 [2nd Dept. 2017].)

A review of the Notice of Claim used by plaintiff herein indicates that the Notice sufficiently identifies the claimant, states the nature of the claim, and describes the time when, the place where, and manner in which the claim arose. Thus, the notice of claim used by plaintiff does not prejudice the defendant. Further, the notice of claim was filed in the time frame as mandated by the Notice of Claim statute. Therefore contrary to defendant's argument, plaintiff does not seek leave to serve a late Notice of Claim.

Therefore, the court concludes that plaintiff's filing of the Notice of Claim upon the Comptroller of the City of New York, meets the statutory provisions of General Municipal Law §50-e(6). Accordingly, defendant's motion to dismiss is denied.

This constitutes the decision and order of the court.

Dated: March 13, 2018
Staten Island, New York



Orlando Marrazzo, Jr.,
Justice, Supreme Court