Ghuman v City of New York
2019 NY Slip Op 31732(U)
June 19, 2019
Supreme Court, New York County
Docket Number: 152998/2019
Judge: Eileen A. Rakower

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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ZULFIQAR GHUMAN,

Petitioner,

- against -

THE CITY OF NEW YORK and THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondents.

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Index No. 152998/2019

DECISION and ORDER

Mot. Seq. #001

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Zulfiqar Ghuman ("Petitioner") brings this action, pursuant to General Municipal Law § 50-e for an Order granting leave to serve a Late Notice of Claim against The City of New York and The City of New York Department of Sanitation (collectively, "Respondents"). The Notice of Claim seeks to recover property damages sustained in a motor vehicle accident on July 10, 2018 at the intersection of Coney Island Avenue and Church Avenue, in Kings County, in the City and State of New York (the "Accident").

Background/Factual Allegations

Petitioner alleges that on July 10, 2018, at approximately 4:50 p.m., a vehicle driven by Michael T. Mazzarella ("Mr. Mazzarella"), and owned and operated by Respondents, struck the rear of Claimant's vehicle, causing $6,115.53 in damages. In the Police Report, the officer's notes state, "Driver 1 [Petitioner] states he was in the turning lane at a red light when Driver 2 [Mr. Mazzarella] reared him causing Damage. Driver 2 states he was pulling into the turning lane and reared Driver 1 [Petitioner.]."

Petitioner contends that immediately after the accident, he repaired the damages to his vehicle so he could continue to earn a living as a livery driver. Petitioner contends that he made a claim to his insurance company and was denied

coverage. Petitioner commenced this action on March 21, 2019 by filing a Petition. Respondents oppose.

Parties' Contentions

According to the Notice of Claim, the date of the incident is July 10, 2018. Therefore, the deadline to file the Notice of Claim was October 8, 2019. Petitioner filed a proposed Notice of Claim on March 21, 2019 and therefore failed to serve a Notice of Claim within the requisite 90-day period. Petitioner brought the pending motion for leave to serve a late Notice of claim on March 21, 2019. That date is within one year and 90 days of the date the claim allegedly accrued and therefore within the applicable statute of limitations. *See* Public Authorities Law § 1276.

A. Petitioner Contends There Was A Reasonable Excuse For Delay, Respondents Had Actual Notice, And The Delay Would Not Substantially Prejudice The Municipality In Its Defense.

Petitioner contends that the delay in filing a Notice of Claim is through no fault of his own. Petitioner contends he awaited his insurance company's decision as to whether the claim would be covered under his policy and that the insurance carrier took a prolonged period of time to process the request, before ultimately denying his claim. Petitioner contends that after he resorted to legal action, his attorney injured his dominant hand on January 21, 2019. Petitioner asserts that as soon as his attorney's injury healed, he filed this action.

Petitioner further contends that Respondents had actual notice of the facts and circumstances establishing the claim. More specifically, Petitioner argues that Respondents' vehicle was damaged when it hit the Petitioner's vehicle. Petitioner asserts that Respondents had to repair the damage and inquire about the events. Petitioner contends that Respondents were given actual notice when their employee remained on the scene of the accident. For this reason, Petitioner argues that Respondents had notice or actual knowledge of the facts and therefore cannot claim prejudice.

B. Respondents Contend Petitioner Lacked A Reasonable Excuse For Delay, Failed to Demonstrate Respondents Acquired Actual Knowledge, And That The Delay Would Substantially Prejudice The Municipality.

Respondents argue that Petitioner does not provide a reasonable excuse for the failure to file a Notice of Claim in a timely manner. Respondents assert that the

failure to provide a reasonable excuse in and of itself warrants denial of leave to serve a late Notice of Claim. *See Gaudio v. City of New York*, 235 A.D.228 [1st Dep't 1997]; *see also Palmer v. City of New York*, 226 A.D.2d 149 [1st Dep't 1996]. Specifically, Respondents argue that Petitioner's act of awaiting an insurance carrier's decision indicates an ignorance of the law. Respondents further contend that Petitioner's excuse that his counsel's hand injury prevented a timely filing is irrelevant because it occurred three months after the 90-day filing requirement expired. Respondents argue that the lack of information or medical documentation regarding the type of injury and its effect on counsel's ability to prepare Petitioner's petition undercut the validity of the excuse.

Additionally, Respondents contend that Petitioner failed to demonstrate that Respondents acquired actual knowledge of the essential facts constituting the claim within 90 days or a reasonable time thereafter. Respondents argue that knowledge of an accident is not equivalent to possessing actual knowledge of a potential claim against the municipality, under the law. *See Mateo v. City of New York*, 245 A.D.2d 25 [1st Dep't 1997]. Respondents thus argue that the factual allegation that a city employee remained on the scene of the accident is not adequate to satisfy the Petitioner's burden of proof. Respondents also argue that allowing Petitioner's claim to stand would go against the legislature's express goal and purpose of allowing the municipality to conduct a prompt investigation of the facts and circumstances.

Finally, Respondents claim that the five months that have passed hinder their ability to investigate and defend against the alleged claims effectively. Respondents argue that knowledge of an accident or the involvement of municipal employees does not confer knowledge to the municipality of facts constituting the claim.

Legal Standard

General Municipal Law § 50-e(1)(a) states that notice of a claim against a municipality must be served within ninety days after the claim arises. The purpose of these notice of claim requirements are to protect the municipality and governmental entities from "unfounded claims and to ensure that [they have] an adequate opportunity to timely explore the merits of a claim while the facts are still 'fresh.'" *Matter of Nieves v New York Health & Hosps. Corp.*, 34 A.D. 3d 336, 337 [1st Dept 2006].

Section 50-e(5) of the General Municipal Law provides that a court may, in its discretion, grant or deny an application made to file a late notice of claim based

on the consideration of a number of factors. The key factors considered are "(1) whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, (2) 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 (3) whether the delay would substantially prejudice the municipality in its defense." N.Y. Gen. Mun. Law § 50 (McKinney). In addition, "the presence or absence of any one factor is not determinative." *See also Velazquez v. City of New York Health and Hosps. Corp. (Jacobi Med. Ctr.)*, 69 A.D. 3d 441, 442 [1st Dept 2010]. "The failure to set forth a reasonable excuse is not, by itself, fatal to the application." *Id.* at 442.

"The petitioners ignorance of the requirement that a notice of claim pursuant to General Municipal Law § 50-e must be served within 90 days after accrual of the claim is not a legally acceptable excuse." *Ragin v. City of New York*, 222 A.D.2d 678 [1995].

"The most important factor 'based on its placement in the statute and its relation to other relevant factors is whether the public corporation acquired actual notice of the essential facts constituting the claim within 90 days of the accrual of the claim or within a reasonable time thereafter.'" *D'Agostino v. City of New York*, 146 A.D.3d 880, 880, [2d Dept 2017]. The Petitioner must demonstrate that the municipality acquired actual knowledge. *Bass v. New York City Transit Auth.*, 45 Misc. 3d 1222(A) [N.Y. Sup. Ct. 2014], aff'd, 140 A.D.3d 449 [1st Dept 2016].

"The direct involvement of the respondent's employee in the accident itself, without more, is also not sufficient to establish that the respondents acquired actual notice of the essential facts constituting the claim." *D'Agostino,* 146 A.D.3d at 881.

Where "the municipality's employee was involved in the accident and the report or investigation reflects that the municipality had knowledge that it committed a potentially actionable wrong, the municipality can be found to have notice." *Jaffier v. City of New York,* 148 A.D.3d 1021,1023 [2d Dept 2017]. "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." *D'Agostino*, 146 A.D.3d at 880–81.

A plaintiff must show that the delay would not substantially prejudice the defendant so that failure to serve a timely notice of claim does not deprive "defendant of the opportunity to conduct a prompt investigation of the merits of the

allegations against it that the notice provision of General Municipal Law § 50-e was designed to afford." *Bass v. New York City Transit Auth.*, 45 Misc. 3d 1222(A) [N.Y. Sup. Ct. 2014], *aff'd*, 140 A.D.3d 449 [1st Dept 2016]. "Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice." *Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 466 [2016], *reargument denied*, 29 N.Y.3d 963 [2017]. "The mere passage of time is not alone a sufficient basis to deny leave to file a late notice of claim. (*Trejo v. City of New York*, 156 A.D.2d 164, 548 N.Y.S.2d 208 [notice filed 13 years after injury])." *Holmes by Holloway v. City of New York*, 189 A.D.2d 676, 677–78 [1993].

Discussion

Petitioner does not provide a reasonable excuse for the failure to serve the Notice of Claim within 90-days. However, "[t]he failure to set forth a reasonable excuse is not, by itself, fatal to the application." *Velazquez*, 69 A.D. 3d at 442.

Respondents "acquired actual knowledge of the essential facts constituting petitioner's claim, based on the reports." *Bass v. New York City Transit Auth.*, 45 Misc. 3d 1222(A) [N.Y. Sup. Ct. 2014], *aff'd,* 140 A.D.3d 449 [N.Y. App. Div. 2016]. Respondents' employee was involved in the accident and then remained at the scene to provide a statement for the Police Report. In the Police Report, the officer's notes state, "Driver 1 [Petitioner] states he was in the turning lane at a red light when Driver 2 [Mr. Mazzarella] reared him causing Damage. Driver 2 states he was pulling into the turning lane and reared Driver 1 [Petitioner]." Consequently, Respondents had knowledge of a potentially actionable wrong, constituting actual notice. *See Jaffier v. City of New York,* 148 A.D.3d 1021,1023 [2d Dept 2017].

Furthermore, Petitioner has demonstrated that his "failure to serve a timely notice of claim" does not deprive "defendant of the opportunity to conduct a prompt investigation of the merits of the allegations against it that the notice provision of General Municipal Law § 50-e was designed to afford." *Velazquez*, 69 A.D. 3d at 442. "Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice." *Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 466 [2016], *reargument denied*, 29 N.Y.3d 963 [2017]. Because Respondents' vehicle was involved in the accident and the police report identified both Petitioner and Mr. Mazzarella, Respondents had the opportunity to conduct a "prompt investigation." *Velazquez*, 69 A.D. 3d at 442. Therefore, Respondents will not suffer substantial prejudice from the late Notice of Claim. Also, as Petitioner points out, Respondents'

vehicle needed repair. Thus, reports must have been generated internally to explain the need for repair.

General Municipal Law § 50–e (5) "should not operate as a device to defeat the rights of persons with legitimate claims." *Matter of Annis v. New York City Tr. Auth.*, 108 A.D.2d 643, 644 [1st Dept 1985]. Therefore, the Petition should be granted, and Petitioner is granted to serve a late Notice of Claim.

Wherefore, it is hereby

ORDERED that Petitioner's motion for leave to file a late Notice of Claim is granted.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: June 19, 2019

Eileen A. Rakower, J.S.C.