

**Medina v MTA Long Is. R.R.**

2020 NY Slip Op 31142(U)

April 28, 2020

Supreme Court, New York County

Docket Number: 151455/2020

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62**

*Justice*

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**INDEX NO. 151455/2020**

LUIS MEDINA,

**MOTION DATE 03/12/2020**

Petitioner,

**MOTION SEQ. NO. 001**

- v -

MTA LONG ISLAND RAIL ROAD, CITY OF NEW YORK,  
METROPOLITAN TRANSIT AUTHORITY

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 12, 13, 14, 16, 17, 18, 19, 20, 21

were read on this motion to/for AMEND NOTICE OF CLAIM.

Upon the foregoing documents, petitioner’s petition seeking leave to amend or in the alternative extend his time to serve a Notice of Claim is decided as follows: (see, General Municipal Law §50-e[5]).

A court may, in its discretion, grant an application for leave to serve an amended notice of claim if the mistake, omission, irregularity, or defect in the original notice was made in good faith, and the municipality has not been prejudiced *Barrios v. City of New York*, 300 A.D.2d 480 (2d Dept. 2002); see also General Municipal Law §50- e(6)

It is within the Court’s discretion to extend the time to serve a Notice of Claim (*In the Matter of Nahema Canty v. City of New York*, 273 AD2d 467 [2d Dept 2000]). "The key factors to be considered in determining whether to grant an application to serve a late Notice of Claim are whether the [governmental unit or its attorneys or its insurance carrier] acquired actual knowledge of the essential facts of the claim within the statutory 90 day period, whether the petitioners had a reasonable excuse for the delay, and whether the delay would substantially prejudice the

[governmental unit or its attorneys or its insurance carrier] in its defense on the merits." (*Matter of "Jane Doe" v. Hicksville Union Free School District*, 24 AD3d 666 [2d Dept 2005]; General Municipal Law §50 e[5]; *Fox v. City of New York*, 91 AD2d 624 [2d Dept 1982]).

Pursuant to General Municipal Law § 50 e, petitioner's time to file a Notice of Claim expired 90 days after June 20, 2019 (September 19, 2019). On September 13, 2019, petitioner served his Notice of Claim upon the City of New York and the Long Island Railroad, receipt of which was confirmed in letters dated September 18 and September 24 respectively. Said Notice of Claim describes the incident as follows: "On June 20, 2019 at approximately 3:40 p.m. Claimant was walking down the stairs leading to Tracks 20 and 21 of Penn Station to board a Long Island Railroad train when he slipped and fell on unreasonably slippery and unsafe stairs. Claimant believes water had accumulated on the stairs. Following Claimant's accident, several Police Officers responded to the scene of the accident. Claimant believes that a NJ Transit Police Officer took his information to complete a report. Claimant believes that an MTA Police Officer may also have completed a report. Claimant doesn't know the names of such Police Officers and was not provided a copy of any report." In a letter dated November 5, 2019, counsel for the LIRR scheduled a pre-action, oral, sworn statutory hearing pursuant to Section 1276 of the Public Authorities Law, for January 21, 2020. Petitioner now seeks to amend said Notice of Claim to further describe his claims. Plaintiff filed the instant petition on February 7, 2020.

The plaintiff has established that the respondents had actual knowledge of the essential facts underlying the claim within the statutory 90-day period or a reasonable time thereafter, as the original Notice of Claim identifies the location of the accident, the complained of condition, and indicates that a police report was taken (See *In the Matter of Nahema Canty v. City of New York*, 273 AD2d 467 [2d Dept 2000]). Respondents argue in opposition that the original Notice of Claim

does not allege that the LIRR or MTA were negligent in any way, making it impossible to evaluate petitioner's claim and that the LIRR does not have knowledge of the specific claim. While the original Notice of Claim does not use the word "negligence," it does clearly imply such negligence and points to a specific claim in a specific location that respondent, LIRR appears to have investigated. Respondents also claim that petitioner has not established service of the original notice of claim, which is flatly contradicted by their acknowledgement of receipt of same. Respondents also object to the amendment, arguing that by expanding the claim to allege against answering respondents that they were negligent in the ownership, operation, control, maintenance, repair and inspection of the accident site that plaintiff has substantively changed the nature of the claim. A notice of claim may not be amended to substantively change the nature of the claim. *Priant v. New York City Transit Authority*, 126 AD3d 774 (2<sup>nd</sup> Dept. 2015). Here, petitioner has not changed any of the essential facts of the claim, but particularized those allegations that were strongly implied but not stated originally.

Furthermore, the plaintiff has established that the Respondents would not be substantially prejudiced in defending the claim on the merits, as there is no evidence of prejudice in the record and in fact, respondents have been investigating the incident. (see, Evers v. City of New York, 90 AD2d 786, 787 [2d Dept 1982]).

Accordingly, petitioner's petition is granted, and it is hereby,

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

ORDERED, that the Notice of Claim annexed to the motion as Exhibit G, is hereby deemed served upon the respondents as required under General Municipal Law § 50 e, effective of the date of this order.

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.

4/28/2020

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE