

Williams v New York Convention Ctr. Operating Corp.

2020 NY Slip Op 32849(U)

August 27, 2020

Supreme Court, New York County

Docket Number: 162553/2019

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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KERN WILLIAMS,

Index No. 162553/2019

Petitioner

- against -

DECISION AND ORDER

NEW YORK CONVENTION CENTER OPERATING CORPORATION d/b/a JACOB K. JAVITS CONVENTION CENTER, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Respondents

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LUCY BILLINGS, J.S.C.:

Petitioner seeks permission to serve a late notice of claim against respondents New York Convention Center Operating Corporation, New York Convention Center Development Corporation, New York State Urban Development Corporation, and Triborough Bridge and Tunnel Authority. N.Y. Pub. Auth. Law §§ 569-a(2), 2570; N.Y. Unconsol. Laws § 6281-a; N.Y. Gen. Mun. Law § 50-e(5). For the reasons explained below, the court grants the petition.

I. BACKGROUND

After suffering an injury at his workplace, the Jacob K. Javits Convention Center Expansion project, July 15, 2019, petitioner failed to file a notice of claim with respondents

within the required 90 days. N.Y. Pub. Auth. Law §§ 569-a(2), 2570; N.Y. Unconsol. Laws § 6281-a; N.Y. Gen. Mun. Law § 50-e(1). Pursuant to General Municipal Law § 50-e(5), however, he may petition to file a late notice of claim within the statute of limitations of one year and 90 days following his injury. N.Y. Gen. Mun. Law § 50-i(1)(c). Therefore this petition, including petitioner's proposed notice of claim, served January 8, 2020, is timely.

II. PETITIONER'S LATE NOTICE OF CLAIM

In determining whether to permit a late notice of claim, the court considers (1) whether respondents received actual notice of the essential facts of petitioner's claim within 90 days after it arose, (2) whether petitioner demonstrates a reasonable excuse for failing to serve his notice of claim timely, and (3) whether the delay substantially prejudices respondents. Newcomb v. Middle Country Cent. Sch. Dist., 28 N.Y.3d 455, 466 (2016); Sproule v. New York Convention Ctr. Operating Corp., 180 A.D.3d 496, 497 (1st Dep't 2020); Rodriguez v. City of New York, 172 A.D.3d 556, 557 (1st Dep't 2019); Mercedes v. City of New York, 169 A.D.3d 606, 607 (1st Dep't 2019).

A. Actual Knowledge

Although respondents maintain that they did not know about petitioner's claim, they offer no evidence to contradict petitioner's account that respondents, through their agent and

general contractor Lendlease Turner Joint Venture or their insurers, acquired knowledge of the essential facts of his claim either on the day of his injury or shortly afterward. Petitioner attests that: "While the medic examined me, the site safety supervisor for Lendlease Turner was . . . entering the information I was giving him into the computer. He told me he that he was entering this data for the accident report." Aff. of William Cafaro Ex. 1 ¶ 6. Petitioner's attorney also insists that: "No matter how long it took for a copy of the accident report to be routed to the Respondents," surely their insurers were notified within the required 90 days. Cafaro Aff. ¶ 23. See Sproule v. New York Convention Ctr. Operating Corp., 180 A.D.3d at 497; Rodriguez v. City of New York, 172 A.D.3d at 558; Mercedes v. City of New York, 169 A.D.3d at 607; Thomas v. City of New York, 118 A.D.3d 537, 538 (1st Dep't 2014).

B. Reasonable Excuse

Respondents further maintain that petitioner provides no reasonable excuse for failing to file his notice of claim timely. Although petitioner's assumption that legal representatives who contacted him after his injury were handling his claim is not a reasonable excuse, Mehra v. City of New York, 112 A.D.3d 417, 418 (1st Dep't 2013), the lack of an excuse is not fatal to his petition. Sproule v. New York Convention Ctr. Operating Corp., 180 A.D.3d at 497; Mercedes v. City of New York, 169 A.D.3d at

607; Dominguez v. City Univ. of N.Y., 166 A.D.3d at 541; Thomas v. City of New York, 118 A.D.3d at 537.

C. Prejudice

Petitioner claims that the late notice will not substantially prejudice respondents because they know the same facts as if the notice of claim were timely filed. Respondents may use the reports prepared of the details of his injury and the subsequent investigation into his absence from work "to refresh memory [and] assist the defense of any action." Cafaro Aff. ¶ 28. Petitioner was injured when he stepped on a loose piece of wood on the construction site, a condition that, as respondents acknowledge, was no more likely to be present for respondents to investigate 90 days after his injury than 177 days afterward, when he served his notice of claim. Petitioner thus satisfies his initial burden of demonstrating that his late notice of claim will not substantially prejudice respondents, which they do not rebut. Newcomb v. Middle Country Cent. Sch. Dist., 28 N.Y.3d at 466.

Instead, respondents simply claim that the passage of time and petitioner's failure to identify the precise location of the injury amount to prejudice, without presenting the particularized evidence required to demonstrate prejudice. Id. at 467; Rodriguez v. City of New York, 172 A.D.3d at 557-58. They do not indicate what evidence has been lost or compromised as a result

of the delay or why notice of the precise location of petitioner's injury is essential to their defense, let alone how the absence of such knowledge relates to the delay in filing a notice of claim.

III. CONCLUSION

Although petitioner presents no reasonable excuse for his delay, once he consulted an attorney, he promptly and within the statute of limitations requested permission to file a late notice of claim with respondents, which had received actual knowledge of the essential facts constituting his claim and demonstrate no prejudice. For these reasons, the court grants the petition to file a late notice of claim with respondents. N.Y. Gen. Mun. Law § 50-e(5). The court considers petitioner's notice of claim served on respondents January 8, 2020, timely filed. This decision constitutes the court's order.

DATED: August 27, 2020

Lucy Billings

LUCY BILLINGS, J.S.C.

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