

**Alexander v New York City Tr. Auth.**

2020 NY Slip Op 33192(U)

September 28, 2020

Supreme Court, New York County

Docket Number: 153830/2020

Judge: Suzanne J. Adams

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

<b>PRESENT:</b>	<u>HON. SUZANNE J. ADAMS</u>	<b>PART</b>	<u>IAS MOTION 21</u>
	<i>Justice</i>		
-----X		<b>INDEX NO.</b>	<u>153830/2020</u>
CRISTIN ALEXANDER,		<b>MOTION DATE</b>	<u>N/A</u>
Plaintiff,		<b>MOTION SEQ. NO.</b>	<u>001</u>

- v -

NEW YORK CITY TRANSIT AUTHORITY, NEW YORK  
CITY DEPARTMENT OF TRANSPORTATION

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 12, 13, 14, 15, 16, 17, 18  
were read on this motion to/for LEAVE TO FILE

Upon the foregoing documents, it is ordered that plaintiff's motion by order to show cause is denied. Plaintiff petitions the court pursuant to General Municipal Law § 50-e(5) for leave to serve a late Notice of Claim. Petitioner initially served a timely Notice of Claim dated April 19, 2019 (Exhibit A to the moving papers), which alleged in sum and substance that on or about February 20, 2019, and into the early morning hours of February 21, 2019, he was caused to be removed and/or thrown from a Metro-North Railroad train by Metro-North employees in or near the county line of the Bronx and Westchester, sustaining significant personal injuries. Subsequently, however, it became known that the events related in the Notice of Claim were largely inaccurate. Rather, plaintiff now alleges that in the early morning hours of February 21, 2019, he was on a New York City Transit Authority subway train in the 207<sup>th</sup> Street station in Manhattan when he sustained his injuries as the result of being "removed and/or thrown off the aforesaid subway, and/or allowed access to the area between 2 subway cars, and the failure to

provide guards to prevent a persons [sic] legs falling through such area between the 2 subway cars.” In the instant motion, plaintiff seeks to be allowed to file a late Amended Notice of Claim (Exhibit C to the moving papers), reflecting the newer allegations as against defendant New York City Transit Authority (“Transit”), and deeming it timely served *nunc pro tunc* based upon the filing of the original Notice of Claim. Transit opposes the motion. (Plaintiff has discontinued this matter as to defendant New York City Department of Transportation.) Plaintiff’s motion is deemed timely served and filed in light of the executive orders temporarily tolling statutes of limitations and time periods in response to the global pandemic.

New York General Municipal Law § 50-e(5) gives a court discretion to allow the filing of a late notice of claim, directing the court to consider such factors as whether the public corporation in question acquired actual knowledge of the facts underlying the claim within 90 days, or a reasonable time thereafter, of its occurrence; whether a late filing would substantially prejudice the public corporation; and whether the petitioner demonstrated a reasonable excuse for the delay. *Williams v. Nassau County Med. Ctr.*, 6 N.Y.3d 531, 535 (2006); *Matter of Bonaguro v. City of New York*, 122 A.D.3d 731, 732 (2d Dep’t 2014). In this matter, there are no factors present which justify the granting of leave to file a late notice. First, plaintiff fails to set forth a reasonable excuse for bringing an application to file a late notice of claim more than one year after the date of the occurrence. Plaintiff maintains that his severe injuries caused him to become physically and mentally incapacitated, to the extent that he imparted incorrect information to his attorney regarding the incident at issue. However, his motion is devoid of any objective evidence of his incapacity that would establish a reasonable excuse for his delay in filing a timely or accurate notice of claim. *See Nunez v. City of New York*, 307 A.D.2d 218 (1<sup>st</sup> Dep’t 2014). To the contrary, the record before the court indicates that notwithstanding his

claimed injuries, plaintiff was able to engage counsel and timely file the original Notice of Claim within 90 days of the incident.

Secondly, there is no evidence in the record that Transit had actual knowledge of the facts of plaintiff's claim within 90 days of its occurrence, or within a reasonable time thereafter. Plaintiff relies on the NYPD Aided Report (Exhibit B to the moving papers) as providing Transit with the requisite knowledge of the underlying facts of plaintiff's claim. However, it is not axiomatic that an Aided Report is sufficient to fulfill the notice of claim requirements under § 50-e(5). Here, the Aided Report on its face does not link plaintiff's injuries with any wrongdoing by Transit. *See Charles v. City of New York*, 67 A.D.3d 793 (2d Dep't 2009) (affirming denial of leave to serve late notice of claim upon New York City and NYPD); *see also Matter of Russ v. New York City Housing Authority*, 198 A.D.2d 361, 362 (2d Dep't 1993) ("As a general rule, knowledge of an accident or occurrence by a municipality's police or fire department cannot be imputed to another public or municipal corporation"). The facts of the present action are distinguishable from those in *Matter of Soto v. New York City Housing Authority*, 180 A.D.2d 570 (2d Dep't 1992), where the Appellate Division found that the municipality acquired actual knowledge of the claim within a reasonable time after the 90-day period expired, by virtue of service of an initial notice of claim, *together with* a police Aided Report in which "the officer observed foreign substances in the area where claimant fell, and clearly investigated as to liability since he attempted to notify the claims unit that day." 180 A.D.2d at 571.

Finally, plaintiff's delay in seeking leave to serve the late notice prejudices Transit's ability to investigate the claim. *Kim v. City of New York*, 256 A.D.2d 83 (1<sup>st</sup> Dep't 1998). Accordingly, it is hereby

ORDERED that plaintiff's motion is denied in its entirety.

This constitutes the decision and order of the court.

9/28/2020  
DATE

\_\_\_\_\_  
SUZANNE J. ADAMS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	