

Johnson v New York City Tr. Auth.

2020 NY Slip Op 35575(U)

August 6, 2020

Supreme Court, New York County

Docket Number: Index No. 452350/2018

Judge: Suzanne J. Adams

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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. SUZANNE J. ADAMS PART IAS MOTION 21
Justice
INDEX NO. 452350/2018
OMAR JOHNSON, MOTION DATE N/A, N/A
Plaintiff, MOTION SEQ. NO. 002 002

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY
Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71
were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71
were read on this motion to/for JUDGMENT - SUMMARY

In this personal injury action, plaintiff alleges that on March 21, 2017, he was hit by a train at the West 4th Street subway station in Manhattan. Plaintiff served a Notice of Claim on defendant New York City Transit Authority ("NYCTA") on July 18, 2017, and an Amended Notice of Claim on August 23, 2017. He served a Notice of Claim on defendant Metropolitan Transportation Authority ("MTA") on July 21, 2017, and an Amended Notice of Claim on August 23, 2017. Defendants conducted a 50-H Hearing of plaintiff on September 21, 2018, and plaintiff served NYCTA and MTA with the Summons and Complaint, venued in Bronx County, on June 20, 2018, and July 2, 2018, respectively. Defendants answered on July 16, 2018, and did not raise the issue of a late Notice of Claim. Thereafter, The City of New York, which also had been named as a defendant, moved to change venue to New York County, which motion was

granted by order dated November 14, 2018. The City then moved to dismiss the action as against it, which motion was granted without opposition by this court's order of July 18, 2019.

Defendants now move pursuant to CPLR 3211 and 3212 for dismissal of the action on the grounds of plaintiff's failure to comply with the Notice of Claim requirements of General Municipal Law § 50-e(5) and Public Authorities Law § 1212. MTA also argues that it is not a proper party to this action because it does not operate or maintain subway stations or platforms, which NYCTA has admitted is within its purview. Plaintiff opposes the motion, and separately has moved for leave to serve late Notices and Amended Notices of Claim or to have the Notices and Amended Notices of Claim deemed timely served or served *nunc pro tunc*, which motion is decided concurrently with the instant motion. For the reasons discussed below, defendants' motion is granted to the extent that the action is dismissed as to MTA, and otherwise is denied.

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). It is undisputed in this matter that defendant NYCTA had actual knowledge of the alleged accident on the day it happened. In addition, plaintiff has demonstrated that NYCTA would not be prejudiced in its defense by deeming the late Notice and Amended Notice of Claim upon it timely served, and NYCTA has not argued otherwise. *See Newcomb v. Middle Country Central School District*, 28 N.Y.3d 455, 465 (2016). Thus, plaintiff's Notice and Amended Notice of Claim is deemed timely served *nunc pro tunc*, and NYCTA's motion to dismiss is denied. Because MTA does not

operate or maintain subway stations or platforms, it is not a proper party to this action, and MTA's motion is granted. *Delacruz v. Metropolitan Transportation Authority*, 45 A.D.3d 482, 483 (1st Dep't 2007).

Accordingly it is hereby

ORDERED that the motion to dismiss as to defendant NYCTA is denied; and it is further

ORDERED that the motion to dismiss as to defendant MTA is granted and the complaint is dismissed in its entirety as against MTA, with costs and disbursements to MTA as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of MTA; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.



8/6/2020
DATE

SUZANNE J. ADAMS, J.S.C.

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