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| <b>Arnold v Town of Camillus, N.Y.</b>                                                                                                                                                                                         |
| 2020 NY Slip Op 35782(U)                                                                                                                                                                                                       |
| January 7, 2020                                                                                                                                                                                                                |
| Supreme Court, Onondaga County                                                                                                                                                                                                 |
| Docket Number: Index No. 006548/2020                                                                                                                                                                                           |
| Judge: Joseph E. Lamendola                                                                                                                                                                                                     |
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STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**PATRICIA ARNOLD,**

Plaintiff,

v.

**TOWN OF CAMILLUS, NEW YORK; POLICE  
CHIEF THOMAS WINN; CAPTAIN JAMES  
NIGHTINGALE; TOWN SUPERVISOR MARY  
ANN COOGAN; DAVID CALLAHAN; JOY  
FLOOD; DICK GRIFFO; STEVEN JAMES;  
MIKE LAFLAIR; MARY LUBER; and JOHN  
DOE(S) and JANE DOE(S), in their individual  
and official capacities as officials, officers,  
agents, employees, and/or representatives  
of the TOWN OF CAMILLUS and/or the  
CAMILLUS POLICE DEPARTMENT,**

Defendants.

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Before: Hon. Joseph E. Lamendola, JSC

Plaintiff Patricia Arnold commenced this action via summons and complaint on October 13, 2020. Plaintiff asserted seven causes of action therein: (1-2) 42 USC § 1983 against all defendants for alleged discrimination, retaliation, hostile work environment, and constructive discharge; (3-4) New York State Human Rights Law violations against all defendants for alleged discrimination, retaliation, hostile work environment, and constructive discharge; (5) intentional and/or reckless infliction of emotional distress against defendant James Nightingale; (6) tortious interference against defendant James Nightingale; and (7) prima facie tort against defendants James Nightingale and Thomas Winn.

Simultaneous with the filing of the complaint, plaintiff filed a motion seeking: (1) a declaration that she was not required to serve a notice of claim for her New York

Human Rights Law claims and (2) leave to serve a late notice of claim for her tort claims and, if required, her Human Rights Law claims.

On November 4, 2020, defendants removed this action to the United States District Court for the Northern District of New York. On February 1, 2021, the District Court remanded plaintiff's state law tort claims for a determination as to whether plaintiff's motion for leave to serve a late notice of claim should be granted. The District Court concluded that, pursuant to Town Law § 67, plaintiff was required to serve a notice of claim and her failure to do so in a timely manner required dismissal of her Human Rights Law claims. Plaintiff thereafter filed a motion for reconsideration in Federal Court. In response, the District Court remanded both plaintiff's state tort law claims and Humans Rights Law claims to decide plaintiff's pending motion from October 2020.

The underlying facts have been accurately set forth in the February 1, 2021 District Court decision and will not be repeated herein (see NYSCEF # 23).

To start, even assuming, arguendo, that the District Court did not rule on the issue and/or that the plaintiff is not collaterally estopped from raising it before this Court, it is clear to this Court that plaintiff was required to file a notice of claim pursuant to Town Law § 67 for her Human Rights Law claims (see *Picciano v Nassau County Civ. Serv. Commn.*, 290 AD2d 164, 170 [2d Dept 2001]; see generally *Blackmon v City of Syracuse*, 185 AD3d 1505, 1507 [4th Dept 2020]; *Thygesen v North Bailey Volunteer Fire Co., Inc.*, 106 AD3d 1458, 1460 [4th Dept 2013]).

Contrary to defendants' contention, however, this Court cannot conclude that it is without jurisdiction to grant plaintiff leave to serve a late notice of claim for her Human

Rights Law claims. While defendants raise an interesting issue of statutory interpretation (comparing the language of Town Law § 67 and General Municipal Law § 50-e), there is no case law to support the same. Above all, by incorporating the General Municipal Law into the Town Law, the Legislature, in this Court's view, clearly intended to allow for an application for a late notice of claim under the Town Law.

In light of these conclusions, the Court must now address whether plaintiff is entitled to serve a late notice of claim.

"In determining whether to grant . . . leave [to serve a late notice of claim], the court must consider, inter alia, whether the claimant has shown a reasonable excuse for the delay, whether the municipality had actual knowledge of the facts surrounding the claim within 90 days of its accrual, and whether the delay would cause substantial prejudice to the municipality" (*Matter of Friend v Town of W. Seneca*, 71 AD3d 1406, 1407 [4th Dept 2010]; see *Matter of Szymkowiak v New York Power Auth.*, 162 AD3d 1652, 1653 [4th Dept 2018]). "[T]he failure to offer an excuse for the delay is not fatal where . . . actual notice was had and there is no compelling showing of prejudice to [respondent]" (*Shane v Central N.Y. Regional Transp. Auth.*, 79 AD3d 1820, 1821 [4th Dept 2010] [internal quotation marks omitted]; see *Matter of Bingham v Town of Wheatfield*, 185 AD3d 1482, 1484 [4th Dept 2020]). "While the presence or absence of any single factor is not determinative, one factor that should be accorded great weight is whether the [respondent] received actual knowledge of the facts constituting the claim in a timely manner" (*Matter of Henderson v Town of Van Buren*, 281 AD2d 872, 873 [4th Dept 2001]; see *Bingham*, 185 AD3d at 1484-1485; *Matter of Turlington v Brockport Cent. Sch. Dist.*, 143 AD3d 1247, 1248 [4th Dept 2016]). "The actual knowledge

requirement of General Municipal Law § 50-e (5) contemplates actual knowledge of the essential facts constituting the claim, not knowledge of a specific legal theory' " (*Mariani v Wilson Cent. Sch. Dist.*, 192 AD3d 1579, 1580 [4th Dept 2021]). "Nevertheless, a respondent's 'knowledge of the accident and the injury, without more, does not constitute actual knowledge of the essential facts constituting the claim' " (*id.*). " 'It is well established that [k]nowledge of the injuries or damages claimed . . . , rather than mere notice of the underlying occurrence, is necessary to establish actual knowledge of the essential facts of the claim' " (*id.*). Finally, with respect to the remaining factor, substantial prejudice, "the burden initially rests on the [claimant] to show that the late notice will not substantially prejudice the public corporation. Such a showing need not be extensive, but the [claimant] must present some evidence or plausible argument that supports a finding of no substantial prejudice" (*Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466 [2016], *rearg denied* 29 NY3d 963 [2017]). "Absent a clear abuse of the court's broad discretion, the determination of an application for leave to serve a late notice of claim will not be disturbed" (*Dalton v Akron Cent. Schs.*, 107 AD3d 1517, 1518 [4th Dept 2013], *affd* 22 NY3d 1000 [2013] [internal quotation marks omitted]).

First, plaintiff has not offered a reasonable excuse for the delay. It is undisputed that plaintiff voluntarily resigned her employment with the Town of Camillus on August 7, 2019. Plaintiff did not, however, serve her notice of claim until October 13, 2020 when she filed this lawsuit. Plaintiff contends that this amount of time should be excused or ignored altogether because "[p]laintiff was fearful of continued retaliation by [d]efendants and did not want to jeopardize her chances at securing employment

outside the Town of Camillus.” This excuse is entirely inconsistent with the record inasmuch as plaintiff had already secured new employment at the time she resigned. Furthermore, her resignation letter conveyed a much different view:

“I would like to sincerely convey my appreciation to you and this department as I have had tremendous experiences and opportunity. I am extremely grateful for the trust and responsibility that you placed on me as it assisted me in growing as an officer and a person. Thank you for all of your support and assistance in this law enforcement journey.”

Second, defendants lacked knowledge of the essential facts. While there is no question that defendants knew of plaintiff’s concerns and her complaints of “unwanted behavior,” the Court agrees with defendants that this is insufficient to satisfy the actual knowledge requirement. Here, prior to the commencement of this lawsuit, there is no record evidence that defendants received any notice of her alleged injuries or claimed damages (*see Vitko v Simon*, 179 AD3d 1515, 1515 [4th Dept 2020]; *Matter of Diaz v Rochester-Genesee Regional Transp. Auth. [RGRTA]*, 175 AD3d 1821, 1822 [4th Dept 2019]; *Matter of Turlington v Brockport Cent. Sch. Dist.*, 143 AD3d 1247, 1248-1249 [4th Dept 2016]). Plaintiff relies heavily on events that took place between March and July 2020. It should be noted that this Court must focus on whether the municipality had actual knowledge of the facts surrounding the claim within 90 days of its accrual or within a reasonable time thereafter (*see Matter of Friend*, 71 AD3d at 1407). In any event, the July 2020 PBA letter explicitly stated that plaintiff “advised us that she thus far has decided not to sue the Town.”

Third, in this Court’s view, plaintiff only provided conclusory allegations, unsupported by any factual detail, that late notice would not substantially prejudice the defendants. This, of course, is insufficient to meet plaintiff’s initial burden (*see Matter of*

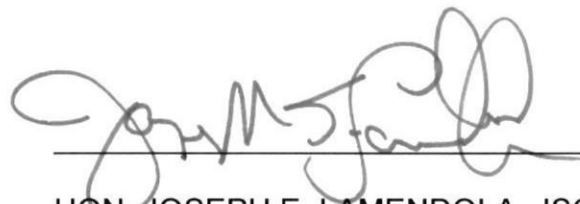
*Mary Beth B. v West Genesee Cent. Sch. Dist.*, 186 AD3d 979, 980-981 [4th Dept 2020]). In any event, even if plaintiff satisfied her initial burden, defendants have established substantial prejudice. Notably, defendants were unable to obtain a timely medical examination of the plaintiff (see *Diez v Lewiston-Porter Cent. Sch. Dist.*, 140 AD3d 1665, 1666 [4th Dept 2016]; see generally *Tate v State Univ. Constr. Fund*, 151 AD3d 1865, 1866 [4th Dept 2017]). In this Court's view, the plaintiff's resignation letter (dated July 31, 2019) provided no indication that a lawsuit was coming. The PBA letter in July 2020 suggested that there would be no lawsuit. Under these circumstances, the Court concludes that defendants were substantially prejudiced by the delay.

Accordingly, it is hereby

**ORDERED**, that plaintiff's motion is **DENIED** in its entirety.

DATED:

1/7/2020



HON. JOSEPH E. LAMENDOLA, JSC