

Guillen v City of New York

2021 NY Slip Op 30296(U)

January 26, 2021

Supreme Court, New York County

Docket Number: 162161/2019

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART IAS MOTION 5

Justice

-----X

EDWARD GUILLEN

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 162161/2019

MOTION DATE 12/17/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 9, 10, 11, 13, 14, 15, 16

were read on this motion to/for LEAVE TO FILE.

Petitioner Edward Guillen filed this petition seeking leave of court pursuant to General Municipal Law (GML) § 50(e)(5), to file a late notice of claim pertaining to an alleged illegal search and seizure, false arrest, assault and battery, and malicious prosecution, stemming from petitioner’s January 31, 2018 arrest in the vicinity of 194 Lenox Avenue, New York, New York, by officers from the New York Police Department (NYPD). Respondent, the City of New York (City), opposes the petition. For the forgoing reasons, and after oral argument on January 26, 2021, petitioner’s application is granted as to his claim for malicious prosecution only.

According to the petition, NYPD officers arrested petitioner on January 31, 2018 (NYSCEF # 1 at ¶ 3). Petitioner was released the following day after he was processed and kept in custody for nineteen hours (*id.*). Petitioner’s charges were dismissed on September 25, 2018 (*id.*). Petitioner did not file a notice of claim until this petition, which was filed on December 17, 2019. Petitioner contends that he should be permitted to file a late notice of claim because the City’s agents, the NYPD officers, by virtue of their participation in the subject events, acquired actual knowledge of the essential facts constituting state law claims within ninety days of their accrual (*id.* at ¶ 7). Petitioner also argues that the City cannot demonstrate any specific prejudice stemming from the delay in filing, and that petitioner has provided a reasonable excuse for the delay.

General Municipal Law (GML) § 50-e(5) provides that a court may extend the 90-day notice of claim filing deadline up to the expiration of the 1-year and 90-day statute of limitations for claims against the City (*Plaza v NY Health & Hosps. Corp. (Jacobi Med. Ctr.)*, 97 AD3d 466, 467 [1st Dept 2012] [The failure to seek a court order excusing an untimely notice of claim within one year and 90 days after accrual of the claim requires dismissal of the action]; *Campbell v City of NY*, 4 NY3d 200, 203 [2005] [“[The Court of Appeals] has consistently treated the year-and-90-day provision contained in section 50-i as a statute of limitations.”]).

Here, all state personal injury claims other than the malicious prosecution claim began to accrue on January 31, 2018, the arrest date (illegal search and seizure, assault, battery, negligent hiring/supervision), or February 1, 2018, the release date (false arrest/imprisonment) (*see Palmer v City of NY*, 226 AD2d 149, 149 [1st Dept 1996] [false arrest and false imprisonment claims accrue upon release from custody]; *McElveen v Police Dept. of NY*, 70 AD2d 858, 858 [1st Dept 1979] [“A cause of action for assault accrues on the date of the assault”]; *Vol. Stream v Zulli*, 64 AD2d 609, 610 [2d Dept 1978] [“At the latest, the [abuse of process action] accrued on January 23, 1974, the date upon which defendants last appeared under compulsion of the abused process and the criminal complaints were withdrawn”]; *Stubbolo v City of NY*, 2008 NY Slip Op 31208[U], *8 [Sup Ct, NY County 2008] [claims for illegal search and seizure “both accrued at the time the property was taken”]; *cf Nunez v City of NY*, 307 AD2d 218, 219 [1st Dept 2003] [malicious prosecution claim accrued when the proceeding was terminated in plaintiff’s favor by dismissal]). Thus, as plaintiff concedes during oral argument, the statute of limitations on the aforementioned claims expired, at the latest, on May 2, 2019, and the Court cannot consider allowing them because this petition was filed on December 17, 2019, over seven months too late.

The court is left only to consider the malicious prosecution claim, which was still within the year-and-ninety-day limitations period when the petition was filed.

GML § 50-e(5) provides, in relevant part, that courts,

“shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including; . . . and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.”

“In deciding whether a notice of claim should be deemed timely served under deemed timely served under [GML] § 50-e (5), the key factors considered are whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in its defense. Moreover, the presence or absence of any one factor is not determinative” (*Plaza v NY Health & Hosps. Corp. (Jacobi Med. Ctr.)*, 97 AD3d 466, 467 [1st Dept 2012]). Similarly, “the lack of a reasonable excuse is not, standing by itself, sufficient to deny an application for leave to serve and file a late notice of claim” (*Matter of Ansong v City of New York*, 308 AD2d 333 [1st Dept 2003]).

With respect to the City’s acquisition of actual knowledge of malicious prosecution claims, actual knowledge of a malicious prosecution claim can also be imputed to the City where the NYPD possessed all essential facts (*Nunez v City of NY*, 307 AD2d 218, 220 [1st Dept 2003]; *Goodall v New York*, 179 AD2d 481 [1st Dept 1992] [reversing supreme court and permitting late notice of claim, including malicious prosecution claim, where the facts and circumstances surrounding the incident were investigated by the Civilian Complaint Review

Board and the incident was investigated by the police in preparation for the criminal prosecution of the plaintiffs)). Similarly, a municipality's "investigation of the underlying crime for which the claimant was arrested and its continuing involvement until such time as he was released, reasonably precludes substantial prejudice arising from any impediments to an investigation of the civil claim" (*Nunez v City of NY*, 307 AD2d 218, 220 [1st Dept 2003]; see *Ansong v City of New York*, 308 AD2d 333, 334 [1st Dept 2003] ["Respondent's claim of prejudice is similarly meritless since police and Criminal Court records pertaining to petitioner's arrest, as well as the favorable disposition of charges against him, are presumably still in existence."]). As petitioner points out in reply, the precedent cited by the City in opposition relies primarily on negligence cases (NYSCEF # 9, City opp at ¶ 17), which can be distinguished from the intentional torts alleged here.

Finally, with respect to the reason for the delay, as the City argues in opposition, "the petitioner's assertion that he knowingly delayed service of a timely notice of claim while the criminal charges were pending due to an unsubstantiated fear of reprisal, does not, under the circumstances of this case, constitute a reasonable excuse" (*Matter of Ruiz v City of NY*, 154 AD3d 945, 946-947 [2d Dept 2017] [affirming denial of petition for leave to file late notice of claim where petitioner failed to submit evidence establishing City's actual knowledge of facts constituting false arrest/imprisonment claim]). Petitioner's contention that a previous arrest on January 4, 2018, for criminal possession of a weapon in the fourth degree, is not considered by the court since it was raised for the first time on reply. Moreover, petitioner does not address why his fear of reprisal was suddenly extinguished when he filed the instant petition on December 17, 2019.

In any event, "[t]he absence of an acceptable excuse for the delay is not necessarily fatal to a motion for leave to serve a late notice of claim" (*Justiniano v NY City Hous. Auth. Police*, 191 AD2d 252, 252 [1st Dept 1993] [affirming decision to permit late service of notice of claim]). "Rather, all relevant factors are to be considered, in particular, whether respondent acquired actual knowledge of the essential facts constituting the claim within the 90-day statutory period or shortly thereafter" (*id.* [holding that knowledge of claims for false imprisonment and malicious prosecution could be imputed to the municipality through the officers in its employ who made the arrest or initiated the prosecution]). Given the court's holding above regarding actual knowledge and prejudice, petitioner has satisfied the factors necessary to justify a late notice of claim, albeit limited to the malicious prosecution claim.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition for leave to file a late notice of claim is GRANTED solely to the extent that the notice of claim attached to the petition (NYSCEF # 1) is deemed timely filed and served as to petitioner's state malicious prosecution claim only; and it is further

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; and it is further

ORDERED that petitioner shall, within 30 days of this order, e-file and serve a copy of this order with notice of entry upon respondent.

This constitutes the decision and order of the Court.



1/26/2021
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: