

Matter of Rodriguez v City of New York
2021 NY Slip Op 30973(U)
March 26, 2021
Supreme Court, Kings County
Docket Number: 511454/2019
Judge: Genine D. Edwards
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At Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 26th day of March 2021

PRESENT:

Hon. Genine D. Edwards
Justice, Supreme Court

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In the Matter of the Claim of BENJAMIN RODRIGUEZ, as Administrator of the Estate of BENJAMIN RODRIGUEZ, Deceased,

Index. No. 511454/2019

Petitioner,

-against-

DECISION/ORDER

THE CITY OF NEW YORK and NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondents.
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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause and Petition.....	1-2
Affirmation in Opposition.....	3

The petitioner seeks, in this first motion sequence, an order pursuant to General Municipal Law 50-e, recognizing the notice of claim previously filed on May 8, 2019 as having been timely filed, *nunc pro tunc*, for the personal injury, conscious pain and suffering and wrongful death of decedent Benjamin Rodriguez or alternatively, granting petitioner leave to serve a late notice of claim as to decedent’s personal injury, conscious pain and suffering, in the form annexed to his papers. New York City Health and Hospitals Corporation (“NYCHH”) opposes.

On December 26, 2018, Benjamin Rodriguez (“decedent”) was taken to Woodhull Hospital (“Woodhull”), a NYCHH facility, after tripping and falling in Brooklyn. Decedent hit his head during the accident. After being at Woodhull for two hours, the decedent was discharged. Several hours later, decedent was taken to Wyckoff Hospital and diagnosed with intracranial hemorrhaging and stroke. Decedent remained at Wyckoff until his death on February 25, 2019.

On May 8, 2019, decedent’s spouse, Maria Rodriguez (“Ms. Rodriguez”) filed a notice of claim against the City of New York and NYCHH. Ms. Rodriguez, as the proposed administrator, made the instant application on May 23, 2019. Shortly thereafter, on June 24, 2019, Ms. Rodriguez died. On November 5, 2020, letters of administration were granted to decedent’s grandson, Benjamin Rodriguez.

The decision to grant leave to serve a late notice of claim or to deem a late notice of claim timely served, *nunc pro tunc*, is within the sound discretion of this Court. The criteria a Court must consider in determining whether to exercise its discretion to permit the service of a late notice of claim include: (1) whether the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days of its accrual or a reasonable time thereafter; (2) whether the delay substantially prejudiced the public corporation in maintaining a defense on the merits; and (3) whether the claimant has demonstrated a reasonable excuse for the delay. *See J.H. v. New York City Health and Hospitals Corporation*, 169 A.D.3d 880, 94 N.Y.S.3d 345 (2d Dept. 2019); *Leon v. New York City Health and Hospitals Corporation*, 163 A.D.3d 670, 81 N.Y.S.3d 140 (2d Dept. 2018).

In this case, the notice of claim was timely as to the cause of action for wrongful death. The decedent died on February 25, 2019. Since the 90 days to serve a notice of claim for a wrongful death cause of action runs from the appointment of a representative of the decedent's estate, the deadline would have been February 3, 2021, which is well after the May 8, 2019 service date. *See* General Municipal Law 50-e(1)(a); *Watts v. City of New York*, 186 A.D.3d 1574, 131 N.Y.S.3d 62 (2d Dept. 2020).

Turning to the notice of claim for personal injury and conscious pain and suffering, this Court must determine whether to deem the late notice of claim timely served, *nunc pro tunc*, since there is no doubt that a notice was not served within 90 days of the accrual of those claims. Petitioner contends respondents acquired actual knowledge by virtue of Woodhull creating and possessing decedent's medical records. Although respondents contend otherwise, the medical records evince that Woodhull discharged decedent despite evidence of head trauma. Specifically, the report of decedent's head CT scan performed by Woodhull included findings that were secondary to a prior hemorrhagic event (NYSCEF No. 20 at page 14). This Court finds that the medical records give rise to Woodhull's notice. *See W.Z. v. New York City Health and Hospitals Corporation*, 185 A.D.3d 759, 127 N.Y.S.3d 125 (2d Dept. 2020); *Matter of Khan v. New York City Health and Hospitals Corporation*, 135 A.D.3d 940, 24 N.Y.S.3d 163 (2d Dept. 2016); *Matter of Rojas v. New York City Health and Hospitals Corporation*, 127 A.D.3d 870, 6 N.Y.S.3d 294 (2d Dept. 2015).

Further, petitioner contends that NYCHH suffered no substantial prejudice as they possessed the medical records and were given notice of the facts within a reasonable time after the accrual of the claims for personal injury and conscious pain and suffering.

Given that lack of knowledge and lengthy delays are important factors in determining whether a defendant is substantially prejudiced, this Court finds no substantial prejudice as to respondents. *Feduniak v. New York City Health and Hospitals Corporation*, 170 A.D.3d 663, 95 N.Y.S.3d 340 (2d Dept. 2019). Moreover, in opposition, respondents failed to indicate with particularity how it would be substantially prejudiced if the petition were granted. *Matter of Breslin v. Nassau Health Care Corporation*, 153 A.D.3d 1256, 62 N.Y.S.3d 118 (2d Dept. 2017); *Matter of Rojas*, 127 A.D.3d 870.

Finally, while respondents contend that petitioner's excuse is not reasonable, lack of a reasonable excuse is not dispositive where there is actual knowledge and an absence of prejudice. *J.H.*, 169 A.D.3d 880; *Brunson v. New York City Health and Hospitals Corp.*, 144 A.D.3d 854, 42 N.Y.S.3d 34 (2d Dept. 2016).

Accordingly, the petition to deem the notice of claim filed on May 8, 2019 as timely, *nunc pro tunc*, is granted.

This constitutes the Decision of this Court.

ENTER,

Genine D. Edwards

Hon. Genine D. Edwards, J.S.C