

Espinal v Port Auth. of N.Y. & N.J.

2021 NY Slip Op 33842(U)

May 11, 2021

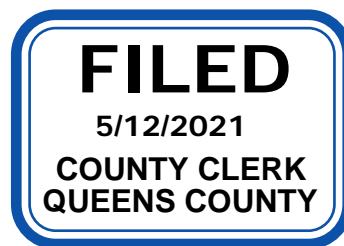
Supreme Court, Queens County

Docket Number: Index No. 720857/20

Judge: Robert I. Caloras

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This opinion is uncorrected and not selected for official publication.



Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS PART 36
Justice

-----X

LEONARDO CANELA ESPINAL,
Plaintiff,
-against-

Index No. 720857/20
Seq. No. 1

PORT AUTHORITY OF NEW YORK AND
NEW JERSEY, METROPOLITAN PAPER
RECYCLING, INC. and ROYAL WASTE
SERVICES, INC.,
Defendants.

-----X

The following numbered papers E6-E12, E16-E17 were read on this motion by Defendant Port Authority of New York and New Jersey (hereinafter "Port Authority") for an order pursuant to CPLR 3211(a)(2) & (7) dismissing Plaintiff's Complaint with prejudice as against it.

Table with 2 columns: Document Name, Papers Numbered. Rows include Notice of Motion - Affirmation - Exhibits, Affirmation in Opposition, and Reply Affirmation.

Upon the foregoing papers, it is ordered that the motion by Defendant Port Authority is granted for the following reasons:

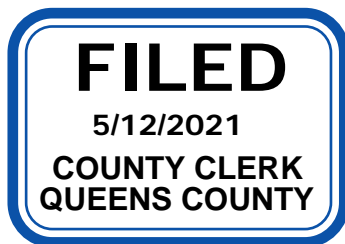
According to the Complaint, on May 7, 2019 Plaintiff was injured when he slipped and fell at the lot within Laguardia Airport adjacent to 81st Street, between 21st Avenue and Ditmars Boulevard, in Queens County. Defendant Port Authority now moves to dismiss the Complaint as against it pursuant to CPLR 3211(a)(2) and (7) claiming Plaintiff failed to timely serve a Notice of Claim pursuant to Uncons Laws of NY § 7107. Plaintiff opposes.

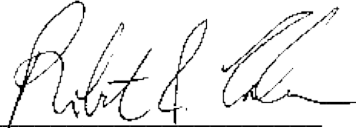
Defendant Port Authority is a bi-state entity created in 1921 by a compact between New York and New Jersey and approved by Congress. (McKinney's Uncons Laws of NY § 6404 [Compact Between New York and New Jersey Creating Port Authority].) As an agency of the State, defendant Port Authority enjoys the same sovereign immunity as the State of New York. (Trippe v Port of N.Y. Auth., 14 NY2d 119, 123 [1964].) The Port Authority, however, has consented to lawsuits against it on the condition that all actions against it are commenced within one year after the cause of action accrued, and if the action is one to recover damages, a notice of claim is served upon the Port Authority at least sixty days before such action is commenced. (McKinney's Uncons Laws of NY § 7107 [Suits Against The Port Authority]; Ofulue v Port Auth. of N.Y. & N.J., 307 AD2d 258, 259 [2d Dept 2003]; see also Estate of Pearlberg v Port Auth. of N.Y. & N.J., 210 AD2d 199, 200 [2d Dept 1994]). Uncons Laws of NY § 7107 provides in pertinent part that "... any suit, action or proceeding prosecuted or maintained under this act shall be commenced within one year after the cause of action thereof shall have accrued, and upon the further condition that in the case of any suit, action or proceeding for the recovery of payment of money, prosecuted or maintained under this act, a notice of claim shall have been served upon the port authority by or on behalf of the plaintiff or

plaintiffs, at least sixty days before such suit, action or proceeding is commenced". Compliance with the condition precedent of giving at least sixty days notice is mandatory and jurisdictional (Lyons v Port Auth. of N.Y. & N.J., 228 AD2d 250, 251 [1st Dept 1996]). The failure to comply with this condition will result in the withdrawal of defendant's consent to the lawsuit and compels dismissal of the action for lack of subject matter jurisdiction (Luciano v Fanberg Realty Co., 102 AD2d 94, 96, [1st Dept 1984]).

Here, the Plaintiff was allegedly injured on May 7, 2019. Therefore, pursuant to Uncons Laws of NY § 7107 Plaintiff was obligated to commence this action by May 7, 2020, and the deadline to serve a Notice of Claim upon the Port Authority was on March 8, 2020. Instead, Plaintiff served the Port Authority with a Notice of Claim on August 14, 2020 and commenced this action on November 4, 2020. Plaintiff's claim that the controlling date for serving a Notice of Claim upon the Port Authority is determined by the day the action is commenced is without merit and does not comport with the procedure set forth in Uncons Laws of NY § 7107. As Plaintiff has failed to comply with the conditions precedent to suit, this Court lacks subject matter jurisdiction over his claims in the Complaint as against Defendant Port Authority. Accordingly, the motion is granted and the Complaint is dismissed as against Defendant Port Authority.

Dated: May 11, 2021




ROBERT I. CALORAS, J.S.C