

Caudle v City of New York

2022 NY Slip Op 32341(U)

July 15, 2022

Supreme Court, New York County

Docket Number: Index No. 154306/2022

Judge: J. Machelle Sweeting

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

TERRANCE CAUDLE

Petitioner,

- v -

CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 154306/2022

MOTION DATE 05/18/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for LEAVE TO FILE

On May 18, 2022, petitioner Terrance Caudle filed two separate petitions, each against defendant City of New York (the "City"), and each seeking an order deeming petitioner's Notice of Claim ("NOC") as timely served nunc pro tunc. One petition was filed under Index Number 154312/2022, and is pending in Part 63 (the "Part 63 action"),¹ and the other was filed under the instant Index Number (154306/2022), and is currently pending before the undersigned (the "instant action"). The Part 63 action involves an alleged incident that occurred on November 18, 2021, and the instant action involves an alleged incident that occurred on July 21, 2021.

In the instant action, petitioner alleges that at 10:20 A.M on July 21, 2021, while he was asleep in his cell inside the Enhanced Supervised Housing Unit at the George R. Vierno Center on Rikers Island, City employees failed to protect him from an assault by other inmates during which he was scalded with hot water.

¹ In the Part 63 action, the court (Hon. Laurence Love) issued a Decision and Order dated June 16, 2022 that granted petitioner leave to serve and file a late notice of claim.

Arguments Made by the Parties

Petitioner argues that respondent City acquired actual knowledge of the facts constituting the claim within the required time for service; the extension does not substantially prejudice the City; and petitioner has a reasonable excuse for the delay in serving the notice of claim.

Specifically, Petitioner argues that the City acquired actual knowledge of the essential facts constituting petitioner's instant claim because the alleged assault occurred in a City facility, in the presence of City employees, and resulted in petitioner being treated in medical facilities operated by the City. Moreover, the details of the assault were documented directedly afterward in an "Injury to Inmate Report" prepared by an employee of the Department of Corrections (the "DOC"), which contained details about how, where, and when petitioner was injured. Further, petitioner argues, the City was given actual knowledge of the facts constituting his claims regarding the inadequate medical treatment of his injuries through records kept and maintained by Correctional Health Services ("CHS").

Petitioner argues that the City is not substantially prejudiced by the delay in serving a notice of claim because the City is able to conduct a full and fair investigation, as respondent City has access to DOC records and surveillance footage regarding the assault, as well as CHS records regarding the failure to provide medical treatment to petitioner.

Finally, petitioner argues that the delay in filing a notice of claim was attributable in part to the "crisis conditions" that have plagued Rikers Island since at least April 2021, which were well-document in the mass media. Petitioner argues that as a result of these "widely reported issues," he was restricted in his ability to research possible claims or consult with an attorney.

In opposition, the City contends that petitioner failed to meet his burden to demonstrate actual knowledge on the part of the City. The City argues that the NOC lacks particularity, and that the documentation that petitioner claims gave notice to the City - which include a CHS work status order, CHS Missed Visit records, and a one-page incident report - lack detail and fail to provide notice of petitioner's claims. For example, the City argues that the incident report simply states that petitioner complained of "injury to both thighs due to hot water," but does not indicate that City employees were involved with or even witnessed the incident. The CHS work status order merely states that petitioner was treated for wound care due to a second degree burn and that petitioner was given instructions to "clean wound to thighs with normal saline, apply Silvadene cream and dressed gauze daily for 10 days." And, the CHS Missed Visit records merely states that petitioner missed visits with nursing services. The City argues that, "The City of New York has hundreds of thousands of employees. To hold that each time an employee of the City creates a document containing information that may expose the City to liability, notice is imputed to the City, would be contrary to the express goal of the legislature and the controlling case law."

The City argues that petitioner failed to offer any excuse whatsoever for his failure to timely file a notice of claim, and instead vaguely states that "crisis conditions at Rikers Island [...] restricted his ability to research possible claims or consult with an attorney."

Finally, the City argues that the City has been severely prejudiced in its ability to defend this claim as a result of the difficulty locating potential witnesses and ability to investigate the circumstances of the alleged incident, including the alleged failure to provide proper security.

Conclusions of Law

“General Municipal Law § 50–e(5) confers upon the court ‘the discretion to determine whether to grant or deny leave to serve a late notice of claim within certain parameters.’ The statute provides, in pertinent part, that in determining whether to grant an extension of time to serve a notice of claim, a court shall consider, in particular, whether the public corporation acquired actual knowledge of the essential facts constituting the claim within the 90–day period specified in § 50–e(1) ‘or within a reasonable time thereafter’ (§ 50–e[5]). Further, under the statute, the court must take into account all other relevant facts and circumstances, including, among other things, whether the petitioner offered a reasonable excuse for the late notice and whether the delay substantially prejudiced the respondent’s defense on the merits. The presence or absence of any one factor, however, is not determinative. Moreover, while the court has discretion in determining motions to file late notices of claim, the statute is remedial in nature, and therefore should be liberally construed [*internal citations omitted*]” (Thomas v City of New York, 118 AD3d 537 [1st Dept 2014]).

Here, as petitioner correctly argues, petitioner is not required to establish that the incident “could not have happened without the City’s negligence” or that “Petitioner did not have any contribution to the altercation.” Instead, under GML 50-e, petitioner is merely required to show that the City had “actual knowledge of the essential facts constituting the claim.”

Here, the alleged assault occurred in a City facility, in the presence of City employees, and resulted in petitioner being treated in medical facilities operated by the City. Accordingly, the court finds that respondent City acquired actual knowledge of the facts constituting the claim within the required time for service. *See also* Orozco v City of New York, 200 AD3d 559 (Sup. Ct. App. Div. 1st Dept 2021) (“Respondent is deemed to have actual notice of the claim by virtue

of the fact that its employees participated and were directly involved in the conduct giving rising to petitioner's claims and are in possession of records and documents relating to the incident [...]. Under these circumstances, knowledge of the essential facts constituting the claims within the statutory period can be imputed to the City”).

As to the City's claim of prejudice, the date of the alleged incident is July 21, 2021 and petitioner's time to file a NOC expired 90 days thereafter, on October 19, 2021. Here, the NOC was not filed until March 8, 2022, which was 230 days after the incident had occurred and 140 days after the statutory deadline (October 19, 2021). However, the New York Court of Appeals held in Matter of Newcomb v Middle Country Cent. School Dist., 28 NY3d 455 (2016):

Although changes in personnel and the fading memories of witnesses may, in fact, be “prejudicial,” a court must consider whether record evidence indicates that substantial prejudice does in fact exist. Providing proof of substantial prejudice on the record is qualitatively and quantitatively different from a mere inference of prejudice. Generic arguments and inferences will not establish “substantial prejudice” in the absence of facts in the record to support such a finding.

Further, the “mere passage of time normally will not constitute substantial prejudice in the absence of some showing of actual injury to the respondent” (Sarkisian Bros., Inc. v State Div. of Human Rights, 48 NY2d 816 [1979]).

Here, petitioner argues that there is no prejudice to respondent City because the City has access to City DOC records created and maintained in the course of business, City surveillance footage pertaining to the alleged assault, and City HHC records created and maintained in the course of business. In opposition, the City is unable to specify any particular witness or record that became unavailable due to the delay in the filing of the NOC, and instead only argues, generally, that “The City was unable to conduct a prompt investigation due to petitioner's delay, and to grant Petitioner leave to serve a late notice of claim would frustrate the very purpose of the


law [regarding serving a late NOC].” Contrary to the arguments made by the City, evidence of prejudice is not established on this record.

Finally, with respect to a reasonable excuse for petitioner’s failure to timely serve the notice of claim, the court credits petitioner’s argument that he was incarcerated at Rikers at the time of the incident and the City’s jails have been severely impacted by Covid-19. Further, as petitioner argues, the First Department has held that “the absence of a reasonable excuse is not, standing alone, fatal to the application,” where the municipal respondent had actual notice of the essential facts constituting the claim and was not prejudiced by the delay (Mercedes v City of New York, 169 AD3d 606 [1st Dept 2019]).

Conclusion

Accordingly, it is hereby

ORDERED that the petition is GRANTED.

<u>7/15/2022</u> DATE		 _____ J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
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"/> REFERENCE