

**Wright v City of New York**

2022 NY Slip Op 32992(U)

September 7, 2022

Supreme Court, New York County

Docket Number: Index No. 154567/2022

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

KEITH WRIGHT,

Petitioner,

- v -

City Of New York, Detective LAMONT DEADRICK, SHIELD NO 1671, 25TH PRECINCT

Respondents.

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INDEX NO. 154567/2022
MOTION DATE 06/02/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 11 were read on this motion to/for

EXTEND - TIME

Pending before the court is a motion in which petitioner seeks an order granting leave to serve a late Notice of Claim ("NOC") upon respondents CITY OF NEW YORK and DETECTIVE LAMONT DEADRICK, SHIELD NO. 1671, 25" PRECINCT (collectively, the "City"), or, alternatively, to deem his proposed NOC, annexed thereto, as timely served, nunc pro tunc.

In the underlying cause of action, petitioner asserts that on September 16, 2021, he was unlawfully arrested, falsely imprisoned and illegally searched and seized at the 25th Police Precinct in New York County, by Detective Lamont Deadrick, Shield No. 1671 (the "Detective"). Petitioner alleges that he was arrested and incarcerated in excess of 24 hours and was subjected to malicious prosecution/abuse of process, from the date of his arrest until the favorable termination of the criminal proceedings on November 17, 2021.

### Arguments Made by the Parties

Petitioner argues that the City acquired actual notice of the essential facts constituting the state law claims within ninety (90) days of their accrual, as petitioner's claims are predicated upon the intentional and unlawful acts of an employee police officer and predicated upon the legal doctrine of *respondeat superior*, which serves to render the City liable for the tortious acts of its employees committed within the scope of their employment. Specifically, petitioner contends:

Pursuant to proper police procedure, the officers, agents, investigatory assistant district attorneys, investigators or any other variant thereof, who were involved in petitioner's arrest, detainment or malicious prosecution were required to maintain and utilize memo books and/or spiral notebooks to contemporaneously record factual details, especially those related to any probable cause determination. The officers were further required to generate detailed complaint follow-up reports ("DD5s") that are used to memorialize the factual circumstances particular to each case. The arresting officer must then provide all facts that may be relevant to the existence of probable cause to the District Attorney's office, so that the District Attorney's Office may properly evaluate the merits of a potential criminal prosecution and draft an accusatory instrument.

Additionally, petitioner argues that his delay in filing a NOC does not substantially prejudice the City's ability to defend the claims on the merits, as there has been no actual prejudice to the City. Petitioner contends that the mere passage of time does not constitute substantial prejudice and that here, the City had actual notice of the events.

Finally, with respect to a reasonable excuse for the delay, petitioner submitted a sworn affidavit (NYSCEF Document #3) that states, in part:

At the time of my arrest, I was 66 years old, had lived in Harlem all my life, and had never ever been arrested or incarcerated before. I served in the State Legislature in excess of 20 years, where I represented many of the people at the location of the accident. [...] The humiliation and embarrassment caused by this arrest and incarceration made me extremely depressed. I felt that I had failed my community, my family, my constituents and my neighbors. My arrest was reported in several local news and social media outlets. My arrest and incarceration embarrassed and humiliated me to such a degree, that I was grossly ashamed and depressed. I did not have any thoughts of commencing a civil action against the City of New York due to my extreme embarrassment and depression. Essentially, even with close friends and family the very last thing that I wanted to do was to discuss my arrest. Whenever I discussed my arrest and incarceration, I had difficulty sleeping, eating

and concentrating on matters of importance. This shame and depression took over my life and still affects me.

In opposition, the City argues that mere knowledge of the facts underlying an occurrence does not constitute knowledge of the claim, as the statute does not require knowledge of the wrong, but notice of the claim itself. The City also argues that the burden rests on the petitioner to show that the late notice will not substantially prejudice the municipality, and petitioner failed to meet that burden. Finally, the City argues that petitioner has failed to justify the delay between the incident and the filing of the present petition, as petitioner “cannot argue that he was focused on defending his innocence from November 17, 2021, when his criminal matter was dismissed, to December 15, 2021, when the statute of limitations ran for his false arrest claims.”

#### 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 [Sup. Ct. App. Div. 1st Dept 2014]). This court has considered all of the statutory factors and finds as follows:

Here, the City argues that petitioner’s motion should be denied because petitioner does not rely on any facts specific to his underlying arrest, but instead merely “relies on legal and factual conclusions that the police officers involved provided all facts relevant to the existence of probable cause to the District Attorney’s office and therefore must have had actual notice of the underlying claims.”

Contrary to the arguments made by the City, in *Orozco v City of New York*, 200 AD3d 559 (1st Dept 2021), the Appellate Division, First Department determined that actual knowledge may be presumed by respondents by the nature of the action and the allegations. Specifically, the Court held “Where, as here, members of the municipality’s police department participate in the acts giving rise to the claim, and reports and complaints have been filed by the police, the municipality will be held to have actual notice of the essential facts of the claim” [*internal citations omitted*]. Notably here, the City does not dispute petitioner’s central contention that City employees participated in 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.

With respect to whether the City has been prejudiced, there is no dispute that petitioner served a late NOC on the City on June 2, 2022, 170 days after the expiration of the 90-day statutory deadline for his state false arrest claims and 102 days after the expiration of the 90-day deadline for his state malicious prosecution claims. However, as was further determined in *Orozco* “In light of respondent’s knowledge of petitioner’s claims, no prejudice would result if petitioner were permitted to file a late notice of claim” (*internal citations omitted*). “Once there has been an initial

showing regarding the lack of substantial prejudice toward the public corporation or municipality, the public corporation or municipality is required to make a ‘particularized or persuasive showing that the delay caused them substantial prejudice.’” (*internal citations omitted*).

Moreover, as the New York Court of Appeals has 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, other than arguing generally that the City would be prejudiced in that its witnesses’ memories would no longer be fresh, the City is unable to specify any particular witness or record that became unavailable due to the delay in the filing of the NOC. This is especially important where, as here, the record is devoid of any evidence of prejudice to the City and, as noted above, the City had actual knowledge of petitioner's claims.

Finally, with respect to whether petitioner had a reasonable excuse, 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]); *see also Orozco* (finding petitioner's excuse that he was preoccupied defending against the unfounded charges and delayed in asserting his rights owing to the pandemic was sufficient under the circumstances to militate in petitioner’s favor).

For all of the aforementioned reasons, it is hereby:

**ORDERED** that petitioner's motion is GRANTED.

This is the Decision and Order of this court.

9/7/2022 DATE					 J. MACHELLE SWEETING, J.S.C.		
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