

Broderick v City of New York
2022 NY Slip Op 34391(U)
December 16, 2022
Supreme Court, New York County
Docket Number: Index No. 156041/2022
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 52

Justice

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JOHN BRODERICK,

Petitioner,

- v -

THE CITY OF NEW YORK, NEW YORK CITY HOUSING AUTHORITY

Respondents.

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INDEX NO. 156041/2022
MOTION DATE 07/20/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12 were read on this motion to/for LEAVE TO FILE

This proceeding arises from personal injuries sustained by petitioner John Broderick (petitioner) on February 22, 2022, when he allegedly stepped on a broken tile on a wet bathroom floor at the New York City Police Department (NYPD) Public Service Area 4, located at 130 Avenue C, New York, NY.

Petitioner now moves for an order pursuant to General Municipal Law (GML) § 50-e (5) for leave to serve and file a late notice of claim upon respondents the City of New York (the City) and the New York City Housing Authority (NYCHA), nunc pro tunc. NYCHA submits opposition to the motion, and petitioner submits a reply.

Here, petitioner served the proposed notice of claim on the City and NYCHA on June 24, 2022, 32 days after the time to do so by right expired. Petitioner asserts that he served his notice of claim after he retained counsel on June 24, 2022 to pursue commencement of legal proceedings to recover money damages for his alleged personal injuries. Petitioner argues that he brings the instant application after a reasonable time following the expiration of the 90-day limitations period and that the City had notice of the facts through its interim investigation

General Municipal Law § 50-e (5) sets forth the factors that the Court must review in granting leave to file a late notice of claim. This statute requires the Court to consider whether the City “acquired actual knowledge of the essential facts constituting the claim within [ninety days] or with a reasonable time thereafter.” GML § 50-e (5). The statute also includes a non-exhaustive list of factors for the Court to weigh in its evaluation, including whether the petitioner provides a reasonable excuse for the delay, whether the respondents acquired actual knowledge of the essential facts constituting the claim within 90 days, and whether there is any prejudice to the respondents in the granting of the application. *Id.*; see also *Sica v Board of Education*, 640 NYS2d 610, 611 (2d Dept 1996). If petitioner establishes that he is entitled to serve late notice of claim, the burden then shifts to the respondents to show with particularized evidence that they are substantially prejudiced by the late service. See *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466-467 (2016). The Appellate Division, First Department has held such applications should be granted when service of the notice of claim occurred within a “reasonable time” after the expiration of the applicable limitations period. See *Harrison v New York City Housing Authority*, 188 AD2d 367 (1st Dept 1992) (holding that a one-month delay constitutes a reasonable time within the meaning of GML § 50-e [5]).

Here, petitioner argues that the City acquired actual knowledge of the essential facts of this claim on the day it occurred and, therefore, would not be prejudiced should the Court grant the instant application. He argues that his “Line of Duty Injury Report” (NYSCEF doc. no. 6), which includes the date, time, place and manner in which the injuries occurred, and a police report was filed regarding the incident. Petitioner maintains that this sufficiently affords the City and NYCHA actual knowledge of all of the essential facts of this claim within 90 days of its occurrence. Petitioner claims that the NYPD thoroughly investigated the underlying incident on the day it

occurred and a report was filed regarding the incident. *See Matter of De Modna v City of New York*, 126 AD2d 435 (1st Dept 1987); *Johnson v New York City Tr. Auth.*, 278 AD2d 83 (1st Dept 2000). Petitioner further claims that he was repeatedly examined by police surgeons for his injuries well within the 90-day limitations period, that a City employee witnessed the accident, and that said witness and petitioner are still available to be deposed. Moreover, petitioner argues that he need not provide an excuse for the delay in serving and filing the instant notice of claim because it was completed within a reasonable time after the expiration of the 90-day limitations period.

In opposition, NYCHA argues that petitioner's motion should be denied, because he fails to provide a reasonable excuse for the delay aside from suggesting that he was unaware of the notice of claim requirement until he retained counsel on June 24, 2022. NYCHA asserts that ignorance of the law does not constitute a reasonable excuse for failing to timely serve a notice of claim. *See Gaudio v City of New York*, 235 AD2d 228 (1st Dept 1997). NYCHA also argues that petitioner fails to make the requisite showing that it acquired knowledge of the essential facts, because the "Line of Duty Report" on which plaintiff relied was prepared by NYPD, not NYCHA. It asserts that NYCHA is a separate entity from NYPD and the City and, therefore, said report cannot impute actual knowledge by NYCHA. Therefore, NYCHA argues that petitioner fails to provide a reasonable excuse for the delay or establish that NYCHA had actual notice prior to the expiration of the 90-day limitations period.

In response, petitioner argues that the location where the accident took place is owned by NYCHA and that NYCHA is responsible for its structural repairs. *See Deed*, NYSCEF doc. no. 11; Memorandum of Understanding between NYCHA and City on Merger of NYCHA Police Department and NYPD, NYSCEF doc. no. 12. Therefore, he asserts that NYCHA would have been apprised of issues within the building, such as his accident, and has access to reports of

incidents occurring within said building. Further, petitioner argues that the notice of claim was immediately filed once he was advised of such requirement. Lastly, petitioner contends that NYCHA has not made the requisite showing with particularized evidence to establish that it would be prejudiced as a result of the delay. See Matter of Necomb, 28 NY3d at 466-467.

The Court finds that petitioner has established that he is entitled to serve a late notice of claim. Petitioner brought the notice within a reasonable amount of time from expiration of the deadline to do so. Petitioner has demonstrated that the City acquired actual knowledge of the essential facts underlying the claim before expiration of the 90-day limitations period. With regard to NYCHA's arguments, it has not provided particularized reasons as to why it would be prejudiced by plaintiff's delay, as required. Therefore, petitioner's application for leave to serve and file a late notice of claim upon respondents is granted.

Accordingly, it is hereby


ADJUDGED that the petition for leave to serve a late notice of claim is granted; and it is further

ORDERED that the proposed notice of claim is deemed timely served *nunc pro tunc*; and it is further

ORDERED that claimant shall commence an action and purchase a new index number in the event a lawsuit arising from this notice of claim is filed.

This constitutes the decision and order of the Court.

12/16/2022
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE