

Carter v City of New York

2023 NY Slip Op 30579(U)

February 27, 2023

Supreme Court, New York County

Docket Number: Index No. 160267/2022

Judge: Judy H. Kim

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

-----X

DASUAN CARTER,

Petitioner,

- v -

THE CITY OF NEW YORK,

Respondent.

-----X

INDEX NO. 160267/2022

MOTION DATE 01/10/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 8, 9, 10, 11, 12, 13

were read on this motion for LEAVE FOR LATE FILING.

On December 2, 2022 at 12:36 p.m., Dasuan Carter commenced an action in Supreme Court, Bronx County by filing of a summons and complaint against the City of New York and various New York City Police Department (“NYPD”) officers under index number 818026/2022E (the “Bronx Action”). Carter’s complaint alleged that on September 3, 2021, he was arrested at his home on Webster Avenue in the Bronx, during which arrest NYPD officers used excessive force by applying “extraordinarily tight metal handcuffs” that cut his skin and led to swelling and bleeding (See NYSCEF Doc. No. 10 [Bronx Action Complaint at ¶¶ 15, 26, 28, 31-33]). In the Bronx Action, Carter asserted claims for, inter alia, assault and battery, negligent hiring, retention and training, negligent supervision, state constitutional violations, and physical and psychological injury (*Id.* at ¶¶39-60).

On the same date that Carter commenced the Bronx Action, he also filed the instant petition in this Court, at 4:03 p.m., seeking leave of the Court to deem his Notice of Claim—which involves the same allegations as those set forth in the Bronx Action (See NYSCEF Doc. No. 2 [Notice of

Claim at p. 6])—as timely filed, nunc pro tunc, pursuant to General Municipal Law §50-e(5) (NYSCEF Doc. No. 1 [Petition]). The petition does not reference the Bronx County Action.

For the reasons set forth below, the Court declines to address the merits of the instant petition and instead, sua sponte, transfers this special proceeding to Supreme Court, Bronx County.

DISCUSSION

“In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action ... the notice of claim shall ... be served ... within ninety days after the claim arises...” (GML §50-e[1][a]), though this deadline can be extended, at the discretion of the Court, upon application by the claimant (GML §50-e[5]). However, such an application “shall be made to the supreme court or to the county court: (a) in a county where the action may properly be brought for trial, (b) if an action to enforce the claim has been commenced, in the county where the action is pending, or (c) in the event that there is no motion term available in any of the counties specified in clause (a) or (b) hereof, in any adjoining county...” (GML § 50-e[7] [emphasis added]).

Neither GML §50-e(7)(a) or (b) permit petitioner to bring this special proceeding in this county. The instant application is not permitted under GML §50-e(7)(a) because Carter’s tort action against New York City cannot, under the facts alleged therein, be tried in New York County—the place of trial of all actions against the City of New York shall be “the county within the city in which the cause of action arose ...” (CPLR §504[3]) and Carter’s claims arise exclusively from events in the Bronx, as petitioner tacitly acknowledged by commencing his tort action there. Neither does GML §50-e(7)(b) permit petitioner to make the instant application here. To the contrary, by the time the petition was filed Carter had already commenced a tort action in

Bronx County and therefore under GML§ 50-e(7)(b) this special proceeding should have been brought in the Supreme Court of that county.

In light of this procedural infirmity, the Court concludes that the proper course is to transfer the instant application to Supreme Court, Bronx County. The Court is guided in this decision by the sole appellate authority addressing this unusual circumstance, Bukoff v New York City Tr. Auth., 184 AD2d 610 (2d Dept 1992). In that case, the Appellate Division, Second Department held that the trial court erred in granting the petitioners' petition for leave to serve a late notice of claim before conducting a hearing to establish whether the order to show cause by which the petition was brought was properly served on respondents. In addition, and as particularly pertinent here, the Second Department noted that New York County was the only proper venue for any proceeding to file a late notice of claim and for the trial of the action—as the underlying accident occurred in New York County and the New York City Transit Authority was a defendant¹—and the trial court should therefore have immediately transferred the special proceeding to New York County. In remanding the special proceeding to the Supreme Court, Kings County, the Second Department directed that it should be immediately transferred to the Supreme Court, New York County for a traverse hearing (Bukoff v New York City Tr. Auth., 184 AD2d 610, 610-11 [2d Dept 1992]). As in that case, the only proper venue for any proceeding to file a late notice of claim and for trial in this matter is Bronx County, and the Court therefore transfers this special proceeding to Supreme Court, Bronx County.

¹ CPLR §505(b) provides that “[t]he place of trial of an action against the New York City Transit Authority shall be in the county within the City of New York in which the cause of action arose, or, if it arose outside of the city, in the county of New York,” paralleling the language of CPLR §504.

Accordingly, it is

ORDERED that this special proceeding is transferred from this Court to the Supreme Court, County of Bronx County; and it is further

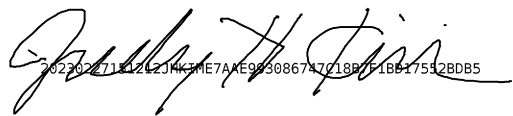
ORDERED that the Clerk of this Court shall transfer the file in this special proceeding to the Clerk of the Supreme Court, County of Bronx County and shall mark the court’s records to reflect such transfer; and it is further

ORDERED that, within thirty days from entry of this order, counsel for petitioner shall serve a copy of this order, with notice of entry, upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this special proceeding with the Clerk of the Supreme Court, Bronx County, so as to ensure an efficient transfer and minimize, insofar as practical, the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the Court.



202302271141212JHKME7AKME983086747018B7F1B817512BDB5

HON. JUDY H. KIM, J.S.C.

2/27/2023

DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE