

**Robles v New York City Hous. Auth.**

2023 NY Slip Op 31902(U)

June 6, 2023

Supreme Court, New York County

Docket Number: Index No. 153015/2023

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 14

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BRUNILDA ROBLES

Petitioner,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

INDEX NO. 153015/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for LEAVE TO FILE.

The petition for leave to file a late notice of claim is denied.

**Background**

This proceeding arises out of an alleged accident involving petitioner on January 1, 2022. She claims she slipped in her apartment after it flooded due to a broken water pipe in her wall. Petitioner alleges that she fell on both of her knees, resulting in an injury that eventually required surgery and physical therapy. Petitioner’s apartment is owned and operated by respondent.

After petitioner’s injury, she alleges that she was focused on getting better and dealing with her injury and so she never filed a notice of claim. Petitioner now brings the instant proceeding for leave to serve a late notice of claim. Petitioner contends that she did not serve the notice of claim earlier because she was distracted dealing with the leaking water pipe and, later, by an asbestos problem. Furthermore, petitioner claims that she was also dealing with breast cancer.

She asserts that respondent had notice of her accident and the ongoing flooding in her apartment. Petitioner maintains that she told her building manager the day of her accident that she fell in her apartment while cleaning up the water. Petitioner argues respondent will not be prejudiced if she is able to file a late notice of claim as respondent had ample opportunity to investigate the water leaks, which she believes are likely memorialized in work tickets held by respondent.

In opposition, respondent contends that petitioner failed to give an adequate reason for her delay in submitting a notice of claim. According to respondent, if petitioner's excuse is adequate, then nearly every reason that distracts an allegedly injured plaintiff could justify granting leave to file a late notice of claim. Moreover, respondent argues that petitioner failed to submit medical records to show that she was incapable of filing a timely notice of claim. Additionally, respondent insists that it never had timely actual notice about petitioner's injuries. Respondent argues that notice about the flooding is not the same as knowing about petitioner's purported injuries and there is no documentation or proof that petitioner notified respondent of her accident within the statutorily required 90-day timeframe.

In reply, petitioner argues respondent admitted to knowing about the leak in petitioner's apartment and contends the function of the notice of claim is to allow respondent a chance to properly investigate the site of an incident. Because respondent knew of the defective condition in petitioner's apartment and did not timely remediate it, petitioner asserts that this is clear evidence that respondent had the requisite actual knowledge. Additionally, petitioner argues that respondent will not be prejudiced if petitioner is allowed to file a late notice of claim because respondent had actual knowledge of the leak.

Moreover, respondent allegedly repaired the leak nine days after petitioner's accident, so any claims about being unable to properly investigate the alleged dangerous condition would be moot. Finally, petitioner maintains that she has a reasonable excuse for the delay in submitting a notice of claim, namely her extensive recovery and various issues occurring in her apartment.

### **Discussion**

“Service of a notice of claim is required in personal injury actions against respondent [New York City Health and Hospitals]. Such notices are governed by the provisions of section 50-e of the General Municipal Law which provides that the notice of claim must ordinarily be served within 90 days after the cause of action accrues. The court may extend the time to serve for the period of the applicable Statute of Limitations, however, including any particular tolls or extensions” (*Matter of Daniel J. by Ann Mary J. v New York City Health and Hosps. Corp.*, 77 NY2d 630, 633 [1991]).

“In determining an application for leave to serve a late notice of claim (General Municipal Law § 50–e[5] ), the court must consider relevant factors and circumstances, including whether an infant is involved, whether there is a reasonable excuse for the delay, whether the public corporation acquired actual knowledge of the facts constituting the claim within 90 days or a reasonable time thereafter, and whether the public corporation's defense on the merits would be substantially prejudiced by the delay” (*Kelley v New York City Health and Hosps. Corp.*, 76 AD3d 824, 825, 907 NYS2d 11 [1st Dept 2010] [internal quotations and citations omitted]).

### ***Reasonableness of Delay***

Petitioner failed to establish a reasonable excuse for her delay in bringing the instant application. Undoubtedly, litigants, such as petitioner, face challenges in complying with the

relatively short deadline to file a timely notice of claim. But petitioner's excuse does not satisfy the lengthy delay at issue here. As respondent points out, petitioner did not submit evidence to show that her injuries were so debilitating that she was unable to speak with a lawyer and file a notice of claim. There is no evidence, for instance, that petitioner was incapacitated.

And while it seems that petitioner had other significant things going on in her life, sometimes litigants have to juggle multiple, important tasks. The Court is unable to extend the deadline because petitioner chose to focus on other, possibly more important, issues.

### ***Knowledge***

"The actual knowledge requirement contemplates actual knowledge of the essential facts constituting the claim not knowledge of a specific legal theory," (*Matter of Townson v New York City Health & Hosps. Corp.*, 158 AD3d 401, 403, 70 NYS3d 200 [1st Dept 2018] [internal quotations and citations omitted]).


Petitioner insists that respondent knew of the leak in her apartment and that she reported her injury to the building manager. The building manager claims in her affidavit that no such report was ever made and she never knew petitioner was injured (NYSCEF Doc. No. 15 at 10). There is no evidence that she sent any medical records of her injury to respondent. In any event, she did not seek medical care for her injury until 4 months after the accident, which is well after the 90-day statute of limitations to serve a notice of claim (NYSCEF Doc. No. 10 at 5). While respondent may have been aware of the water leak in petitioner's apartment, petitioner did not meet her burden to show that respondent had actual notice that petitioner sustained a knee injury related to the leak.

**Prejudice**

“[T]he burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation. Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice” (*Matter of Newcomb v Middle County Cent. Sch. Dist.*, 28 NY3d 455 466, 45 NYS3d 895 [2016]). The Court finds that petitioner did not adequately demonstrate the absence of prejudice. Respondent had no opportunity to investigate the circumstances of petitioner’s accident. Although respondent fixed the leak in petitioner’s apartment, that is not the same as having an opportunity to explore how petitioner was purportedly injured. As with any alleged personal injury, obtaining details about the accident as soon as possible affords the potentially liable party with the best chance to assess its liability and possible damages. Here, respondent would be forced to investigate an incident that occurred more than a year ago. Under the applicable statutory scheme, that constitutes prejudice sufficient to deny the instant application.

Accordingly, it is hereby

ADJUDGED that the petition for leave to serve a late notice of claim is denied and this proceeding is dismissed without costs or disbursements.

<p><u>6/6/2023</u> DATE</p>		 <hr/> ARLENE BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input checked="" type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE