

**Goode v City of New York**

2023 NY Slip Op 32314(U)

July 11, 2023

Supreme Court, New York County

Docket Number: Index No. 159845/2022

Judge: Judy H. Kim

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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

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MAURICE GOODE,

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 159845/2022

MOTION DATE 12/20/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 10, 11, 12, 13 were read on this motion to/for LEAVE TO FILE.

Upon review of the foregoing documents, the petition for leave to serve a late notice of claim (the "Petition") is granted for the reasons set forth below.

Petitioner seeks to commence an action against respondent the City of New York (the "City") for, inter alia: (1) assault; (2) battery; (3) medical negligence; (4) negligent and intentional infliction of emotional distress; (5) negligent hiring, supervision, and training; (6) denial or delay of medical care in violation of New York Civil Rights Law §28; and (7) unspecified violations of the New York City and New York State Human Rights Laws, based on events which occurred during his incarceration on Rikers Island in 2021. As a predicate to commencing that action, petitioner filed the instant petition on November 15, 2022.

In connection with the Petition, petitioner submits an affidavit alleging as follows: Petitioner was arrested on September 16, 2021 and transported to Rikers Island on or about September 18, 2021 on a Department of Correction ("DOC") bus (NYSCEF Doc. No. 4 [Goode Affirm. at ¶2]). After arriving at Rikers Island, the detainees were left on the bus for approximately

eighteen hours without access to bathrooms, food, or water, allegedly because the receiving intake unit was too crowded and insufficiently staffed (Id. at ¶¶3-5). After being let into the intake area of the Otis Bantum Correctional Center (“OBCC”), petitioner remained there for several days, during which time he was forced to sleep standing up inside the crowded intake cells (Id. at ¶¶8-9). Petitioner was then transferred to a quarantine unit for a short time, during which DOC staff sprayed the men with mace (Id. at ¶¶10-11).

Shortly thereafter, Petitioner was moved to a new unit (Id. at ¶12). Upon his arrival, gang members on the unit asked him about his gang affiliation and threatened him (Id.). Petitioner reported these threats to a Correction Officer and requested that he be moved to a new unit (Id. at ¶¶11-13). He was transferred back to OBCC on October 3, 2021 but was again approached by a group of gang members demanding his gang affiliation (Id. at ¶¶13-14). Petitioner refused to answer or otherwise associate with this group (Id.). Later that day, petitioner “heard one of the incarcerated individuals direct a Correction Officer to turn the lights off, after which the room went dark, and petitioner was attacked by the gang members who had questioned him earlier (Id. at ¶¶15-18). He could not tell how many people had attacked him but a Correction Officer later told him that he was assaulted by seven people (Id. at ¶20). He was attacked for approximately two to three minutes before the “bubble officer” unlocked a door to the “day room,” and he was able to run away (Id. at ¶22).

After the attack, petitioner was taken to a medical unit where he was given approximately ten 800 mg tablets of ibuprofen (Id. at ¶¶23-24). Petitioner was then taken to a single cell where he remained for three days before being moved to West Facility, where he was x-rayed (Id. at ¶¶24-25). After West Facility, Petitioner was moved to the Vernon C. Bain Center (“VCBC”) at which point he was immediately surrounded in a corner of the unit and asked about his gang

affiliation (Id. at ¶26). He refused to respond and asked a Correction Officer to move him to a safer area (Id. at ¶27). In response, petitioner was taken to the opposite side of VCBC, where he again encountered issues with threatening gangs (Id. at ¶¶28-29). Petitioner approached the same Correction Officer for help but was told there were no remaining options for transfer (Id.). Petitioner approached a second Correction Officer, the “bubble officer,” and reported the threats and told her that he was “scared and needed to be moved” (Id. at ¶30). This Correction Officer responded that she could not do anything to help him until Monday, three days later (Id.).

That evening, after concluding he would be attacked again before Monday, petitioner attempted to take his own life by ingesting approximately nine of the 800 mg pills he had received earlier at the medical unit (Id. at ¶34). Petitioner began to feel woozy and approached a Correction Officer and told him what he had done (Id. at ¶¶35-36). He was then taken to a nursing station and, thereafter, taken by ambulance to Lincoln Hospital, where he stayed for several days (Id. at ¶37). He was eventually returned to Rikers and placed in mental health observation (Id. at ¶38). He was released from Rikers on December 24, 2021 (Id. at ¶46).

Petitioner adds that he was diagnosed with schizophrenia in 2014 but was not given the medication he used to treat same while incarcerated and did not resume this medication after his release. As a result, he began having paranoid delusions that prevented him from contacting an attorney until he resumed his medications in April or May of 2022 (Id. at ¶¶40, 44-51). Petitioner also submits medical records from his treatment at Lincoln Hospital in October 2021, which prescribed “psychiatric admission,” noting that he was “unsafe to be discharged” without such care (NYSCEF Doc. No. 5).

Petitioner argues that the foregoing establishes a reasonable excuse for his failure to commence this action within ninety days of the accrual of his claims as well as the City’s actual

knowledge of his assault and suicide attempt, and that no prejudice to the City will result from granting the petition. The City opposes the petition, disputing each of these points.

### DISCUSSION

General Municipal Law §50-e(1)(a) provides that a party who intends to sue the City must file a notice of claim within ninety days from the date on which the claim arose. This requirement is intended “to protect the municipality from unfounded claims and to ensure that it has an adequate opportunity to explore the merits of the claim while information is still readily available” (Porcaro v City of New York, 20 AD3d 357, 357 [1st Dept 2005] [internal citations and quotations omitted]). However, GML § 50-e “is not intended to operate as a device to frustrate the rights of individuals with legitimate claims” (Porcaro v City of New York, 20 AD3d 357, 358 [1st Dept 2005] [internal citations and quotations omitted]). Accordingly, a plaintiff who misses this ninety-day deadline may still move for leave to serve a late notice of claim within one year and ninety days of the claim’s accrual (See GML §50-e[5]; CPLR §217-a).

It is undisputed that petitioner’s claims accrued between September 18, 2021, when he was transported to Rikers Island and December 24, 2021, when he was released. Therefore, his time to file a notice of claim elapsed, at the earliest, on December 17, 2022. As the instant petition was filed on November 15, 2022, it is not barred by GML §50-i(1)(c)<sup>1</sup>. Accordingly, the Court considers the petition on its merits.

When considering an application for leave to file a late notice of claim, the court considers a number of factors, with particular emphasis on: “(i) the reasonableness of the excuse offered for the delay in filing the notice of claim; (ii) whether the municipality obtained actual knowledge of

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<sup>1</sup> In light of the Court’s determination that this special proceeding is timely, the Court declines to address petitioner’s argument that his time to file same was tolled during the pendency of a class action brought in the United States District Court for the Southern District of New York, Butler et al v City of New York et al, 15-CV-3783, to which petitioner was not a party.

the essential facts constituting the claim within the 90-day as-of-right filing period or within a reasonable time thereafter; and (iii) whether the municipality was prejudiced because the claimant did not file during the as-of-right period” (Orozco v City of New York, 200 AD3d 559, 560 [1st Dept 2021], lv to appeal granted, 39 NY3d 903 [2022]). All three of this factors weigh in favor of petitioner.

Petitioner has established a reasonable excuse for his delay in filing a notice of claim, through his affidavit detailing his mental health issues upon his release from Rikers and his 2021 records from Lincoln Hospital documenting same (See e.g., Rivera v City of New York, 127 AD3d 445 [1st Dept 2015]).

Petitioner has also established that the City had actual knowledge of the pertinent facts underlying his claims, as the alleged assault and suicide attempt “occurred in a City facility, in the presence of City employees, and resulted in petitioner being treated in medical facilities operated by the City” (Caudle v City of New York, 2022 NY Slip Op 32341[U], 4 [Sup Ct, NY County 2022] citing Orozco v City of New York, 200 AD3d 559, 562 [1st Dept 2021]; see also Jaime v City of New York, 205 AD3d 544 [1st Dept 2022] [“the officers who allegedly assaulted petitioner or witnessed the incidents would, as respondent’s employees, have had immediate knowledge of the events giving rise to this dispute”]). In addition, it is undisputed that the DOC, as a matter of policy, maintains records of all assaults and attempts at self-harm such that the City’s actual knowledge of these events can be inferred (See Orozco v City of New York, 200 AD3d 559, 560 [1st Dept 2021]). To the extent the City argues that DOC’s investigation into plaintiff’s suicide attempt and assault are insufficient to impute actual knowledge to the City for any other alleged negligence on its part asserted in petitioner’s affidavit (i.e., his eighteen hour bus stay without food or water and the general conditions inside Rikers Island he encountered thereafter), the Court

disagrees. The City has actual notice of these claim because “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 [same]” (Orozco v City of New York, 200 AD3d 559, 562 [1st Dept 2021])

In light of the City’s actual knowledge, petitioner has established that it has not been prejudiced by the petitioners’ delay (See id.). In opposition, the City has failed to rebut petitioner’s showing, as it makes only made “[g]eneric arguments and inferences,” without pointing to “facts in the record to support such a finding” (Matter of Newcomb v Middle Country Cent. School Dist., 28 NY3d 455, 466 [2016])

Accordingly, it is

**ORDERED** and **ADJUDGED** that the petition is granted and petitioner’s notices of claim attached to the Petition (NYSCEF Doc. No. 3) is deemed timely filed and served nunc pro tunc; and it is further

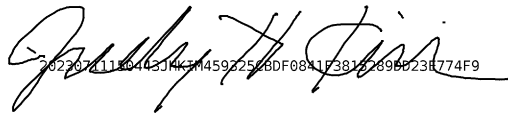
**ORDERED** that, in the event lawsuits arising from this notice of claim are filed, the petitioners shall commence an action and purchase a new index number; and it is further

**ORDERED** that petitioner shall, within fifteen days, file and serve a copy of this decision and order with notice of entry upon all parties; and it is further

**ORDERED** that respondent City of New York shall serve notice upon plaintiff days of its intention to hold a General Municipal Law §50-h examination within thirty days of the date of this decision and order and that petitioner is directed to appear for such examination within ninety days

from receipt of said notice.

This constitutes the decision and order of the Court.



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7/11/2023

DATE

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

CHECK ONE:

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CASE DISPOSED  DENIED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART  OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: