

**Biddle v City of New York**

2023 NY Slip Op 32819(U)

August 14, 2023

Supreme Court, New York County

Docket Number: Index No. 157206/2023

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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TRISHA BIDDLE

Petitioner,

- v -

THE CITY OF NEW YORK,

Respondent.

-----X

**INDEX NO.** 157206/2023

**MOTION DATE** 07/18/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13 were read on this motion for LEAVE TO FILE – LATE NOTICE OF CLAIM.

Upon the foregoing documents, petitioner’s motion to serve a late notice of claim is granted on default and for the reasons set forth below.

The Petition alleges that on March 15, 2023, petitioner tripped and fell on a defective condition on the sidewalk abutting the Jefferson Market Library located at 425 Avenue of Americas, New York, New York (the “Property”), sustaining injuries (NYSCEF Doc. No. 1 [Petition at ¶¶4-5]). An investigation by petitioner’s counsel revealed no deeds or tax records except for a designation of the Property as a historic landmark and tax bills directed to the New York Public Library Astor Lenox and Tilden Foundations (the “Library”) (*Id.* at ¶6). As a result, on April 3, 2023, petitioner commenced an action against the Library in the Supreme Court of New York, New York County under Index Number 153013/2023 (*Id.* at ¶7). On July 10, 2023, the Library interposed an Answer denying ownership of the Property (*Id.* at ¶8). On July 12, 2023, the Library’s counsel advised plaintiff’s counsel that, pursuant to a nineteenth-century contract

between the City of New York (the “City”) and Andrew Carnegie, the Library occupies the Property while the City owns it (Id. at ¶¶9-10).

On July 18, 2023, petitioner commenced this proceeding, pursuant to General Municipal Law (“GML”) §50-e, for leave to serve a late notice of claim on the City, arguing that: (i) petitioner’s difficulty in identifying the City as the owner of the Property, despite her good faith efforts, established a reasonable excuse for her failure to timely serve a notice of claim; and (ii) the City will not be prejudiced by the delay because the defect at issue remains unchanged from the date of her accident. In support of this latter contention, petitioner submits an affidavit dated July 14, 2023, attesting that photographs taken by an investigator on July 13, 2023 depict the defect at issue as it was on the date of her accident (NYSCEF Doc. No. 4 [Biddle Aff. at ¶¶6-8]).

The City does not oppose the Petition.

### DISCUSSION

GML §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, while “[s]ervice of a notice of claim is a condition precedent to [the] assertion of a tort claim against a municipal corporation” (Needleman v McFadden, 197 AD3d 1070 [1st Dept 2021] [internal citations omitted]), 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]).

GML §50-e(5) gives the Court “the discretion to determine whether to grant or deny leave to serve a late notice of claim within certain parameters” (Richardson v New York City Hous. Auth., 136 AD3d 484, 484-85 [1st Dept 2016] [internal citations omitted]). “[F]actors to be considered by the court include: whether the failure to identify the proper party was an excusable error, whether the public corporation received actual knowledge of the essential facts constituting the claim within 90 days of the accident or a reasonable time thereafter, and whether the delay substantially prejudiced the public corporation's ability to defend the claim on the merits (Id. [internal citations and quotations omitted]). “[T]he presence or absence of any one factor is not determinative” (Velazquez ex rel. Segarra v City of New York Health and Hosps. Corp. (Jacobi Med. Ctr.), 69 AD3d 441, 442 [1st Dept 2010]).

Here, petitioner has provided a reasonable excuse for her delay based upon her reasonable misapprehension that the Library owned the Property and her prompt application to serve a late notice of claim on the City upon discovering her error (See e.g., Kobernik v City of New York, 61 AD3d 483 [1st Dept 2009]). Plaintiff has also established that the City will not be prejudiced by service of the notice of claim a little over six months after the date of her accident—i.e., approximately three month beyond the ninety-day window for such service created by GML §50-e(1)(a)—since the defect at issue remains unchanged since that date (See e.g., Matter of Richardson v New York City Hous. Auth., 136 AD3d 484 [1st Dept 2016]; see also Pendley v City of New York, 119 AD3d 410, 410 [1st Dept 2014]).

Accordingly, it is

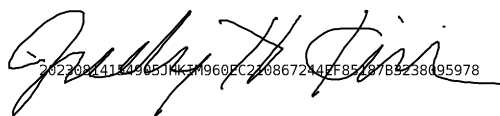
**ORDERED** and **ADJUDGED** that the Petition is granted; and it is further

**ORDERED** that petitioner shall, within ten days from the date of this decision and order, serve a copy of this decision and order, with notice of entry, and the notice of claim in the form

annexed to her Petition (NYSCEF Doc. No. 10) upon the City of New York and New York City Comptroller's Office; and it is further

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

This constitutes the decision and order of the Court.



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8/14/2023

DATE

HON. JUDY H. KIM, 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