SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DENISE M DOMINGUEZ** **PART** **21**

Justice

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ROSALYN REQUENA,

Petitioner,

- v -

THE NEW YORK CITY DEPARTMENT OF EDUCATION, THE CITY OF NEW YORK, THE NEW YORK CITY SCHOOL BUS UMBRELLA SERVICES, INC.

Respondents.

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INDEX NO. 150577/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13 were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, the Petition to serve a late notice of claim on the Respondents is denied.

A court, pursuant to General Municipal Law §50-e, has discretion to grant or deny a timely application for an extension of time to serve a late notice of claim upon a public entity (General Municipal Law §50-e [5]; CPLR 217-a; *Pierson v. City of New York*, 56 NY2d 950 [1992]).

In evaluating whether leave to file a late notice of claim should be granted, "[t]he key factors which the court must consider… are whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in its defense.… the presence or absence of any one factor is not determinative… and the absence of a reasonable excuse is not fatal." (*Dubowy v. City of New York*, 305 A.D.2d 320, 321, 759 N.Y.S.2d 325 [1st Dept 2003] *internal citations omitted*; *see Matter of Morris*, 88 A.D.2d 956, 957, 451 N.Y.S.2d 448 [2d Dept 1982], *aff'd sub nom. Morris v. Suffolk Cnty.*, 58 N.Y.2d 767, 445 N.E.2d 214 [1982]; *See Matter of Porcaro v. City of New York*, 20 A.D.3d 357, 799 N.Y.S.2d 450 [1st Dept 2005]).

Great weight must be given to whether the public entity acquired actual knowledge of the essential facts constituting the claim within ninety (90) days or within a reasonable time thereafter (General Municipal Law §50-e [5]; *see Bertone Commissioning v City of New York*, 27 AD3d 222 [1st Dept 2006]; *Matter of Orozco v City of New York*, 200 A.D.3d 559, 161 N.Y.S.3d 1 [1st Dept 2021], *leave to appeal granted*, 39 N.Y.3d 903, 199 N.E.3d 481 [2022]). However, the mere "… knowledge of the facts underlying an occurrence does not constitute knowledge of the claim. 'What satisfies the statute is not knowledge of the wrong. What the statute exacts is notice of the 'claim''." (*Chattergoon v. New York City Hous. Auth.*, 161 A.D.2d 141, 142, 554 N.Y.S.2d 859, 860 [1990], *aff'd*, 78 N.Y.2d 958, 580 N.E.2d 406 [1991], *quoting Thomann v. City of Rochester,* 256 N.Y. 165, 172, 176 [1931]; *see also Kim v. City of New York*, 256 A.D.2d 83, 681 N.Y.S.2d 247 [1st Dept 1998]).

Additionally, it is the burden of the petitioner to demonstrate that the late notice of the claim will not be substantially prejudicial. (*Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 466, 68 N.E.3d 714 [2016]). "Once there has been an initial showing regarding the lack of substantial prejudice toward the public corporation or municipality, the public corporation or municipality is required to make a 'particularized or persuasive showing that the delay caused them substantial prejudice'." (*Orozco v. City of New York*, 200 A.D.3d 559, 563, 161 N.Y.S.3d 1 (2021), *leave to appeal granted*, 39 N.Y.3d 903, 199 N.E.3d 481 [2022], *quoting Lawton v Town of Orchard Park*, 138 AD3d 1428, 1428 [4th Dept 2016]; *see* (*Newcomb v. Middle Country Cent. Sch. Dist.*, 28 N.Y.3d 455, 466, 68 N.E.3d 714 [2016]).

Upon review, the Petitioner has not met the burden in establishing the key factors warranting leave to file a late notice of claim against the Respondents.

In support of the Petition, the Petitioner submits the verified Petition, the police report, photos from the scene of the accident, an affidavit and correspondence from the Sedgwick Claims Management Services (NYSCEF Doc. 1, 4, 7, 8 6).

As per the verified petition and affidavit, the Petitioner asserts that on May 11, 2022, at approximately 3:20 p.m., they were a passenger in a motor vehicle that was involved in an accident on the Tri-Borough Bridge when the vehicle the Petitioner was in was struck in the rear by the Respondents bus. As a result of the accident, the Petitioner sustained various personal injuries. (NYSCEF Doc. #1, 7).

As the accident occurred on May 11, 2022, pursuant to General Municipal Law §50-e, the Petitioner had 90 days, by August 9, 2022, in which to serve the Respondents with a notice of claim.

The Petitioner does not present any argument as to why the notice of claim was not timely served other than to claim in the affidavit that the Petitioner was unaware of the need to file a notice of claim and was preoccupied with medical treatment. However, ignorance of the law is not a reasonable excuse (*see Rodriguez v. New York City Health & Hosps. Corp.*, 78 A.D.3d 538, 538, 911 N.Y.S.2d 347, 347 [1st Dept 2010]; *Bell v. City of New York*, 100 A.D.3d 990, 954 N.Y.S.2d 229, [2d Dept 2012]). Moreover, there is no claim by the Petitioner of actual medical/physical/mental incapacitation and there are no medical records submitted in support of such a claim. (*Umeh v. New York City Health & Hosps. Corp.*, 205 A.D.3d 599, 169 N.Y.S.3d 579 [1st Dept 2022]; *Bell* 100 A.D.3d 990). Upon review, the Petitioner has not set forth a reasonable excuse for why the notice of claim was not served on the Respondents timely.

Rather, the Petitioner argues that the lack of a reasonable excuse is not fatal to the application because the Respondents had actual knowledge as they employed the bus operator, as a police report was prepared regarding the accident and as their apparent insurance provider was contacted.

This argument does not take into consideration long held case law which holds that notice of the underlying incident does not constitute notice of a potential claim. (*Chattergoon, supra.*). A police report may not be sufficient to show actual knowledge of the underlying facts of the claim if the report "… does not contain facts from which it can be readily inferred that a potentially actionable wrong had been committed by the respondents." *Clarke v. Veolia Transportation Servs., Inc.*, 204 A.D.3d 666, 667, 163 N.Y.S.3d 836 [2d Dept 2022]; *Evans v. New York City Hous. Auth.*, 176 A.D.2d 221, 574 N.Y.S.2d 343 [1st Dept 1991]). Upon review, the police report concerning this incident reflects that the Respondents' bus was first rear-ended by a vehicle that fled the scene of the accident, *before* there was contact with the Petitioner's vehicle. Moreover, the letter sent to the purported insurance carrier for the Respondents contains no additional information other than what is in the police report and the letter was not also sent to either of the Respondents. Nor does the Petitioner rely upon any caselaw which holds that notice of a potential claim to an insurance carrier satisfies the requirements of General Municipal Law §50-e.

Finally, it is the burden of the petitioner to demonstrate that the late notice of the claim will not be substantially prejudicial. (*see Newcomb supra.; Bornschein v. City of New York*, 203 A.D.3d 570, 162 N.Y.S.3d 708 [1st Dept 2022]). Here, the Petitioner argues that the Respondents will not be prejudiced because the records that existed within the 90 day filing period still exist, such as the police report anything prepared by the operator. This argument is speculative and not supported by any evidence as the Petitioner has not established that the Respondents acquired actual notice of the claim against it within statutory deadline, or a reasonable time thereafter. As set forth herein, the mere knowledge of an incident does not constitute knowledge of the claim. (*see Chattergoon* 161 A.D.2d at 142). Nor is there any evidence submitted that shows that any investigation of this incident was ever conducted by the Respondents. In opposition, the Respondents argue that they would be substantially prejudiced because they did not have notice of the claim in sufficient time to conduct a full investigation, such as securing photos of all vehicles involved and locating any video footage from the bridge. Accordingly, the Petitioner has failed to demonstrate that the Respondents would not be prejudiced if a late notice of claim were to be served.

In evaluating an application to serve a late notice of claim, courts must balance the intent of the General Municipal Law §50-e to protect public entities from "unfounded claims and to ensure that [they] have an adequate opportunity 'to explore the merits of the claim while information is still readily available'" alongside the rights of individuals to bring forth legitimate claims (*Porcaro* 20 AD3d at 357 *supra., quoting Teresta v. City of New York*, 304 N.Y. 440, 443, 108 N.E.2d 397 [1952]). Upon review, the Petitioner has not demonstrated that the filing of a late notice of claim is warranted.

Accordingly, it is hereby ORDERED that this Petition seeking to serve a late notice of claim upon the Respondents is denied.

12/21/2023
DATE

DENISE M. DOMINGUEZ
HON. DENISE M. DOMINGUEZ
J.S.C.

CHECK ONE:	[X]	CASE DISPOSED			[ ]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[X]	DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER			[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN			[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE