

**Matter of Clark v New York City Dept. of Educ.**

2024 NY Slip Op 30746(U)

March 8, 2024

Supreme Court, New York County

Docket Number: Index No. 161982/2023

Judge: Hasa A. Kingo

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told him that Petitioner had an accident on January 5, 2023, and would like to file an “Intent to Sue Claim” (*id.* ¶ 14). Linton advised Petitioner to fill out the attached “legal referral (Notice of Claim) form,” and complete a “Notice-of-Claim (intent to sue)” within 90 calendar days of the date of accident if the injury is a line of duty injury (*id.* ¶ 15). Petitioner completed and returned his “Intent to Sue (Notice of Claim)” on March 20, 2023 (*id.* ¶ 16). On March 21, 2023, Linton confirmed receipt and advised Petitioner that a line of duty injury claim needs to be made with Petitioner’s school administration (*id.*). Thereafter, Petitioner opened a line of duty injury claim to receive paid time off (*id.* ¶ 18). Petitioner’s claim was subsequently denied on April 8, 2023, because “time has elapsed for the principal/supervisor’s acknowledgement/timekeeping or request for supporting documentation” (*id.*). Thereafter, Petitioner retained counsel and on April 13, 2023, filed a notice of claim with Respondent (*id.* ¶ 20). On November 15, 2023, Petitioner received a notice from Respondent that the claim has been disallowed because it was not filed within ninety (90) days from the date of accident as required by General Municipal Law § 50-e (5) (NYSCEF Doc No. 3, Roth affirmation ¶ 9). Petitioner now brings this order to show cause for leave to file the late notice of claim. The motion is unopposed.

Pursuant to General Municipal Law § 50-i(a), no personal injury action may be commenced against the City unless a notice of claim was served upon it within 90 days after the subject claim arose. 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 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” (General Municipal Law § 50-e; *Orozco v City of New York*, 200 AD3d 559, 560 [1st Dept 2021], *lv granted*, 39 NY3d 903 [2022]). “The presence or absence of any one factor is not determinative” (*Corwin v City of New York*, 141 AD3d 484, 489 [2016]). However, the “most important factor” is whether the municipality “acquired actual knowledge of the essential facts constituting the claim within the time specified” (*id.* at 123; *citing 124 Padilla v Department of Educ. of the City of N.Y.*, 90 AD3d 458, 459 [1st Dept 2011]).

In support of the motion, Petitioner proffers that Respondent had actual knowledge of the essential facts constituting the claim as early as January 5, 2023, the day the accident occurred (NYSCEF Doc No. 3, Roth affirmation ¶ 7). Petitioner argues that Respondent had actual knowledge on the day of the accident because Plaintiff was injured on Respondent’s premises and multiple witnesses, including faculty, were present (*id.*) Petitioner further argues that Respondent was aware of the essential facts of his claim when he filed an Injury Report which described the date, time, and location of the accident, how the accident occurred, and the injuries Petitioner sustained as a result (*id.*) Petitioner avers that he even put Respondent on notice of a potential suit because Petitioner described Respondent’s potential negligence in the Injury Report, stating that the stairs were uneven and poorly lit (*id.*). Petitioner states that Respondent also had actual knowledge of the essential facts of his claim because he advised assistant principal Schott that he would be out of work because of the accident on school premises and the injuries he sustained as a result (*id.* ¶¶ 7, 20). Petitioner was out of work for approximately twenty days and requested paid time off for the time out of work (*id.* ¶ 26). Further, Petitioner argues that Respondent had actual knowledge of the essential facts of his claim when he sent a copy of the Injury Report, along with his medical records to Respondent’s employees on January 23, 2023, January 27, 2023, and

January 31, 2023, and when he informed the teacher's union of his accident and subsequently filed an Intent to Sue on March 20, 2023 (*id.* ¶¶ 7, 21).

Notably, Respondent has not opposed the motion. Upon consideration of the petition, notice of claim, and the arguments advanced in Petitioner's motion papers, the court finds that Petitioner has stated sufficient grounds to extend the time to serve a notice of claim pursuant to General Municipal Law § 50-e(5). Petitioner has shown that Respondent acquired actual knowledge of the essential facts constituting his claim in January 2023, such that it will not be prejudiced by the short delay in filing the notice of claim on April 13, 2023. Respondent had actual knowledge of the facts of Petitioner's claim the day the accident occurred when Petitioner fell on school premises and in front of students and faculty. Respondent further acquired the essential facts of Petitioner's claim on January 6, 2023, when Petitioner completed and provided Respondent with an Injury Report on Respondent's own form describing the facts of the accident and Petitioner's injuries (*see Mercedes v City of New York*, 169 AD3d 606, 607 [2019] [petitioner's affidavit stating that he signed an incident report prepared by respondent's employee shortly after the accident... demonstrate prima facie that respondent received actual notice of the pertinent facts underlying his claim, if not the negligence claim itself...]). Respondent then further obtained actual knowledge on January 12, 2023, when Petitioner contacted the assistant principal to let him know that he was injured because of an accident at the school and would not be returning until it was safe to do so on the advice of his doctor. The assistant principal demonstrated his actual knowledge of the accident by writing back to Petitioner and including additional employees of Respondent on the e-mail. Respondent was made further aware of the facts constituting Petitioner's claim when Petitioner was out of work for approximately twenty days following the accident, and when he requested paid time off for this time out of work. Respondent also likely had to find classroom coverage for the time that Petitioner was out. Beyond these initial points of communication between Petitioner and Respondent, Petitioner sent a copy of the Injury Report and his medical records to employees of Respondent on three additional occasions in January, January 23, 2023, January 27, 2023, and January 31, 2023. In these e-mails Petitioner reiterated that the completed Injury Report was already provided to the principal and assistant principal of the school. Based on Petitioner's fall on school premises, and multiple touch points with Respondent wherein he described the accident, and the injuries he sustained, his need for time off, and desire to be paid for his time out, Petitioner made Respondent aware of the essential facts constituting his claim. Moreover, Respondent had actual knowledge of the essential facts when it received Petitioner's Injury Report. Petitioner also went a step further and made Respondent aware of his desire to bring a cause of action by filing an intent to sue with the teacher's union, and stating in his Injury Report that the stairs he tripped on were uneven and poorly lit. Thus, Respondent had actual knowledge of the essential facts constituting Petitioner's claim, and his desire to bring a cause of action.

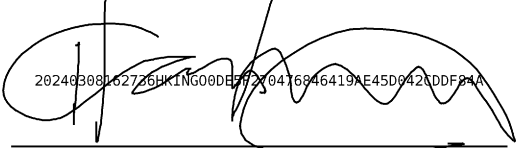
Petitioner does not offer a reasonable excuse for the twelve-day delay in filing the notice of claim, but provides an overwhelming showing that Respondent was made aware of the facts surrounding his accident, and the injuries he sustained as a result within the ninety-day period (*see Mercedes*, 169 AD3d at 607, *supra* [the absence of a reasonable excuse is not, standing alone, fatal to the application, where the municipal respondent had actual notice of the essential facts constituting the claim and was not prejudiced by the delay]). Based on the short, twelve-day delay in filing the notice of claim, and Respondent's actual knowledge of the essential facts constituting his claim in early January 2023, close in time to when the accident occurred, Respondent had

ample opportunity to investigate. As Respondent had the opportunity to investigate and assess the merits of Petitioner’s claim, there is no prejudice resulting from the delay in filing. Consequently, the motion submitted by the Petitioner is hereby granted.

Accordingly, it is

ORDERED and ADJUDGED that the petition for leave to file and serve a late notice of claim is granted.

This constitutes the decision, order, and judgment of the court.

<u>3/8/2024</u> <b>DATE</b>	 <small>20240308162736HAKINGO00DE57230476946419AE45D6420DDF8AA</small> <b>HASA A. KINGO, J.S.C.</b>	
<b>CHECK ONE:</b>  <b>APPLICATION:</b>  <b>CHECK IF APPROPRIATE:</b>	<input checked="" type="checkbox"/> <b>CASE DISPOSED</b> <input checked="" type="checkbox"/> <b>GRANTED</b> <input type="checkbox"/> <b>DENIED</b> <input type="checkbox"/> <b>SETTLE ORDER</b> <input type="checkbox"/> <b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/> <b>NON-FINAL DISPOSITION</b> <input type="checkbox"/> <b>GRANTED IN PART</b> <input type="checkbox"/> <b>OTHER</b> <input type="checkbox"/> <b>SUBMIT ORDER</b> <input type="checkbox"/> <b>FIDUCIARY APPOINTMENT</b> <input type="checkbox"/> <b>REFERENCE</b>