

Glover v Inc. Vil. of Rockville Ctr.
2024 NY Slip Op 35301(U)
March 20, 2024
Supreme Court, Nassau County
Docket Number: Index No. 619640/23
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT: Honorable James P. McCormack

Justice

_____X

LILA D. GLOVER,

TRIAL/IAS PART 8

NASSAU COUNTY

Petitioner(s)

-against-

Index No.: 619640/23

Motion Seq. 001

Motion Submitted: 1/24/24

INC. VILLAGE OF ROCKVILLE CENTRE,
ROCKVILLE CENTRE FIRE DEPARTMENT
and JOSEPH RUGOLO,

Respondent(s)

_____X

The following papers read on these motions:

Notice of Motion/Supporting Exhibits.....X
 Affirmation in Opposition.....X
 Reply Affirmation.....X

Petitioner, Lila D. Glover (Glover), petitions this court for an order, pursuant to General Municipal Law § 50-e (5), for leave to file a late notice of claim upon Respondents, Inc. Village of Rockville Centre (Village), Rockville Centre Fire Department (RCFD) and Joseph Rugolo (Rugolo). Respondents opposes the petition.

Glover alleges that she suffered personal injuries on June 28, 2023 when the vehicle she was driving collided with a RCFD fire truck driven by Rugolo and owned by the Village. Glover claims that she had a green light and that the fire truck went through a red light and caused the accident. According to Glover, she served a notice of claim on

October 24, 2023, and Respondents claim it was not received until November 1, 2023. Regardless, the notice of claim was approximately one month late. Glover moves for leave to file a late notice of claim.

Pursuant to General Municipal Law § 50-e (1) (a), in order to commence an action against a municipality or public corporation, a petitioner must serve a notice of claim within 90 days after the claim arises (*Kellman v Hauppauge Union Free School Dist.*, 120 AD3d 634, 635 [2d Dept 2014], citing *Jordan v City of New York*, 41 AD3d 658, 659 [2d Dept 2007]). “Timely service of a notice of claim is a condition precedent to a lawsuit sounding in tort and commenced against a municipality” (*Matter of Ruiz v City of New York*, 154 AD3d 945, 946 [2d Dept 2017], quoting *Matter of Zaid v City of New York*, 87 AD3d 661, 662 [2d Dept 2011]; *see* General Municipal Law § 50-e [1] [a]). Upon the application for leave to serve a late notice, the court has discretion to “extend the time to serve a notice of claim . . .” (General Municipal Law § 50-e [5]; *see Kellman*, 120 AD3d at 635).

In determining whether to allow service of a late notice of claim, the court should consider whether: (1) the municipality acquired actual knowledge of the essential facts from which the claim arose within 90 days of its accrual or a reasonable time thereafter; (2) the petitioner demonstrated a reasonable excuse for failing to serve a timely notice of claim and for subsequent delay in seeking leave to serve a late notice of claim; and (3) the delay would substantially prejudice the municipality in its ability to maintain its defense on the merits (*Coronel v New Jersey Tr. Corp.*, 173 AD3d 828, 829 [2d Dept 2019]; *see Nunez v Vil. of Rockville Ctr.*, 176 AD3d 1211, 1213 [2d Dept 2019]; *see also Jordan*, 41 AD3d at 659).

In evaluating these factors, it is up to the court's discretion whether to grant a motion to serve a late notice of claim (*Matter of Newcomb v Middle Country Cent. School Dist.*, 28 NY3d 455, 465 [2016]; *see also Heiman v City of New York*, 85 AD2d 25, 28 [1st Dept 1982]). "Neither the presence nor the absence of any one factor is determinative, and even the absence of a reasonable excuse is not necessarily fatal" (*Jordan*, 41 AD3d at 659). The court must consider all other facts and circumstances and its "determinations must be supported by record evidence" (*Matter of Newcomb*, 28 NY3d at 461, 465; *see General Municipal Law § 50-e [5]*). Central to General Municipal Law § 50-e (5) is whether the municipality had actual knowledge of the essential facts constituting the claim within 90 days or a reasonable time thereafter (*Heiman*, 85 AD2d at 28).

As for a reasonable excuse, Glover's counsel blames it on losing a paralegal for six weeks due to a hip surgery after the notice of claim had been dictated to them. Claims of law office failure are generally required to include a "detailed and credible" explanation. (CPLR §2005; *People's United Bank v. Latini Tuxedo Mgt., LLC*, 95 AD3d 1285 [2d Dept 2012]). The excuse herein lacks any detail. However, it does appear as if Respondents had notice of the claim within 90 days of the incident. The municipality "must have knowledge of the facts that underlie the legal theory on which liability is predicated in the notice of claim . . ." (*Kellman*, 120 AD3d at 635, quoting *Matter of Felice v Eastport/S. Manor Cent. School Dist.*, 50 AD3d 138, 148 [2d Dept 2008]). The police report, a Village incident report and a New York State incident report were all submitted in opposition to the petition. Each report details there was an accident between the two vehicles. While there were no injuries reported at the scene, Glover's legal

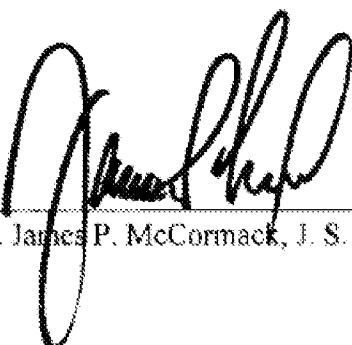
theory was that she was injured in the accident. The Respondents were clearly aware of the accident, and actually acknowledged performing an investigation related to the accident. The legal theory is Glover's claim that Rugolo went through a red light and caused the accident. It does not appear that Respondents deny this, but instead argue Rugolo was responding to an emergency, with the lights/flashers on, and it was Glover who failed to yield right of way. Because Glover's claims of Respondents' alleged liability are based the accident itself, Respondents were aware of the facts that make up the claim. Nor does the court see how Respondents could be prejudiced based upon the short delay and their ability to perform an investigation.

Accordingly, it is hereby

ORDERED, that Glover's petition for leave to file a late notice of claim is GRANTED. The notice of clam served upon Respondents is deemed timely served, *nunc pro tunc*.

This constitutes the Decision and Order of the Court.

Dated: March 20, 2024
Mineola, New York


Hon. James P. McCormack, J. S. C.

ENTERED

Mar 22 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE