

Rivera v City of New York
2024 NY Slip Op 35411(U)
May 28, 2024
Supreme Court, Richmond County
Docket Number: Index No. 150082/2024
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

PART C2

SONIA RIVERA,

Present:

Petitioner,

Hon. Orlando Marrazzo, Jr.

-against-

DECISION AND ORDER

THE CITY OF NEW YORK¹ and NEW YORK CITY
HOUSING AUTHORITY,

Index No. 150082/2024

Motion No. 001

Respondent(s).

X

The following papers numbered 1 to 4 including e-filed documents listed on NYSCEF document numbers 1 - 30 were marked fully submitted on the 10th day of April, 2024.

Upon the foregoing papers, the Order to Show Cause (001) by petitioner SONIA RIVERA for leave to file a late Notice of Claim as against respondent NEW YORK CITY HOUSING AUTHORITY, is granted.

FACTS

Petitioner SONIA RIVERA (hereinafter “petitioner”) alleges that on June 1, 2023, she sustained personal injuries when she tripped and fell in her apartment located at 1754 Richmond Road, Apartment 2C, known as the Berry Houses on Staten Island and operated by the respondent NEW YORK CITY HOUSING AUTHORITY (hereinafter “NYCHA”). It is alleged that petitioner’s foot became caught underneath a loose, rubber sash glued to the floor between the

¹ Petitioner’s Order to Show Cause for leave to file a Late Notice of Claim as against respondent THE CITY OF NEW YORK was denied following oral argument on April 10, 2024. The Court reserved decision in regard to petitioner’s application as against respondent NEW YORK CITY HOUSING AUTHORITY.

bedroom and the hallway of the apartment. According to petitioner, the rubber sash was 2 feet, 5.5 inches long by 1 inch, 4/16 wide and was secured to the floor by glue on both ends but without any nails or screws to secure the middle portion of the sash. Petitioner contends that her foot slid underneath the sash, causing her to fall. According to petitioner, the sash was improperly installed, maintained and/or repaired and that she had made several complaints to NYCHA regarding the sash but never received a response.

According to General Municipal Law §50-e, since the incident occurred on June 1, 2023, petitioner was required to serve a Notice of Claim upon the appropriate municipal respondents within 90 days of the incident, but she never did. Instead, a Notice of Claim was served on December 28, 2023. Since the Notice of Claim was untimely, NYCHA rejected the claim and considered it a nullity.

Petitioner now seeks leave to file a late Notice of Claim upon NYCHA and argues that she has met the criteria for allowing the filing of a late Notice of Claim. According to petitioner, she has a reasonable excuse for the late filing; NYCHA had actual notice of the facts and circumstances of her claim within a reasonable time and will suffer no prejudice by allowing the late filing of the Notice of Claim.

In support, petitioner submits her own affidavit wherein she explains, in detail, that following her accident, she was brought by ambulance to Staten Island University Hospital (hereinafter "SIUH"), which was followed by multiple admissions to several rehabilitation facilities. She was subsequently admitted to Richmond University Medical Center (hereinafter "RUMC") in September 2023 and sent to another rehabilitation facility until her eventual discharge in October 2023. Petitioner further explained that while her health issues continued, she began to search for an attorney to determine whether she was entitled to pursue a claim because of her

accident. Finally, on or about December 13, 2023, she spoke with her present attorney, Arnold DiJoseph, Esq., who explained that she had a meritorious claim but that a Notice of Claim must be filed immediately. Petitioner argues that together, this proof establishes a reasonable excuse for the untimely Notice of Claim.

Petitioner also argues that NYCHA will suffer no prejudice if the late Notice of Claim is permitted since the loose, rubber sash in her apartment is in the same condition now, as it was when the accident occurred in June 2023 and she submits photographs corroborating this claim. Finally, petitioner argues that she made complaints regarding the dangerous condition of the sash prior to the date of accident and, therefore, NYCHA had notice of the condition which caused her to fall. Based on the foregoing, petitioner argues that her application to file a late Notice of Claim should be granted.

In opposition, NYCHA argues that a Notice of Claim must be served within 90 days after the claim arises. Since petitioner's claim arose on June 1, 2023, a Notice of Claim should have been served upon NYCHA no later than August 30, 2023. Here, petitioner's Notice of Claim not served until December 28, 2023, which is more than seven months after the claim arose. Accordingly, NYCHA properly considered it a nullity and had no obligation to reject it or notify petitioner that the Notice of Claim was late.

Additionally, in order to petition the Court for permission to serve a late Notice of Claim, petitioner must offer a reasonable excuse for failing to timely serve a Notice of Claim; establish that NYCHA had actual knowledge of her claim within 90 days from the date of the accident or a reasonable time thereafter; and/or establish that NYCHA will suffer no prejudice in allowing the service of a late Notice of Claim. Here, NYCHA argues that petitioner physical incapacity is not a reasonable excuse since the medical documentation and periods of confinement are not

continuous but are random admissions to the hospital and rehabilitation facilities. In addition, NYCHA argues that the alleged pre-accident complaints do not establish actual notice and that NYCHA's knowledge of the condition does not constitute actual knowledge of the essential facts constituting her claim. NYCHA also argues that petitioner's December 28, 2023 Notice of Claim does not constitute actual notice since it was served after the 90-day period within which to serve had expired and is considered a nullity.

Finally, NYCHA argues that petitioner has failed to establish the absence of prejudice based on the current condition of the rubber sash. According to NYCHA, petitioner submits undated photographs which she claims establish the current condition of the rubber sash located at the doorway. However, NYCHA argues that some of the photographs show a raised rubber sash, and some photographs show a flat rubber sash. Thus, the inconsistent photographs is certainly prejudicial in regard to the current condition of the rubber sash.

DISCUSSION

It is without question that General Municipal Law §50-e, which requires that a claimant serve a notice of claim upon a municipal corporation within 90 days of the date of the accident, is intended to protect a public corporation against stale or unwarranted claims and to enable it to investigate claims timely and efficiently while the information is still readily available (*see Caselli v. City of New York*, 105 AD2d 251 [2nd Dept. 1984]). In deciding whether leave to file a late notice of claim should be granted, the key factors are (1) whether the petitioner has demonstrated a reasonable excuse for failure to serve a timely notice of claim; (2) whether the municipality acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter; and (3) whether the delay would substantially prejudice the municipality in maintaining its defense on the merits (*see Braverman*

v. City of White Plains, 115 AD2d 689, 690 [2nd Dept. 1985]). “However, the presence or absence of any of these factors is not necessarily determinative” (Williams v. Nassau County Med. Ctr., 6 NY3d 531, 538-539 [2006]), and it has repeatedly been held that, absent a clear abuse of the court’s broad discretion, the determination of an application for leave to serve a late notice of claim will not be disturbed (*see* Newcomb v. Middle Country Central School District, 28 NY3d 455 [2016]). In addition, where there is no prejudice, the court clearly has the discretion to grant leave to serve a notice of claim, even if there is no reasonable excuse for the delay (*see* Matter of Lawrence v. County of Sullivan, 233 AD2d 609 [3d Dept. 1996]).

Based on the circumstances presented in this case, it is the opinion of this Court that petitioner has offered a reasonable excuse for the untimely Notice of Claim. In this regard, petitioner’s medical condition, *i.e.*, history of admissions to several hospitals and rehabilitation facilities for several months following the subject incident was, undoubtedly, the cause of her delay in seeking legal advice. Moreover, the Court is satisfied that respondent received notice of the facts constituting the claim. “In order to have actual knowledge of the essential facts constituting the claim, the public corporation must have knowledge of the facts that underlie the legal theory or theories on which liability is predicated in the notice of claim; the public corporation need not have specific notice of the theory or theories themselves” (Felice v. Eastport/South Manor Cen School Dist., 50 AD3d 138, 149 [2nd Dept. 2008]). Here, petitioner has submitted photographs identified by her as depicting the current condition of the subject sash, which are sufficient to reasonably infer that a potentially actionable wrong was committed (*see* Matter of Thompson v. City of New York, 95 AD3d 1024 [2nd Dept. 2012]). In addition, she states in her affidavit that complaints were made by her to NYCHA regarding the dangerous condition of the rubber sash prior to the date of the accident. Based on the above proof, the

Court is satisfied that any delay in serving the Notice of Claim will not substantially prejudice NYCHA in maintaining a defense (*see Bramble v. City of New York*, 125 AD3d 856 [2nd Dept. 2015]).

Accordingly, it is hereby

ORDERED that the Order to Show Cause by petitioner SONIA RIVERA for leave to file a Late Notice of Claim is granted; and it is further

ORDERED that the proposed Notice of Claim submitted with the petition is deemed timely served, *nunc pro tunc*.

ENTER,



J.S.C.

Hon. Orlando Marrazzo, Jr.
Supreme Court Justice

Dated:

5/28/24