

Chubb Natl. Ins. Co. v City of Yonkers
2024 NY Slip Op 35580(U)
April 16, 2024
Supreme Court, Westchester County
Docket Number: Index No. 56038/2024
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

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CHUBB NATIONAL INSURANCE COMPANY,
A/S/O JAMES P. MITCHELL,

Plaintiff(s)/Petitioner(s).

-against-

THE CITY OF YONKERS,

Defendant(s)/Respondent(s).

-----X

The following papers were filed to the New York State Court Electronic Filing System (NYSCEF) and read on the Petitioner's instant application for a court order, pursuant to General Municipal Law §50-e, allowing Petitioner to file a late notice of claim, and/or for such other further relief this Court deems just and proper.

NYSCEF Documents No. 1-15

Background Facts:

Petitioner CHUBB NATIONAL INSURANCE COMPANY a/s/o JAMES P. MITCHELL (hereinafter, "Petitioner" or "Chubb National") commenced this proceeding pursuant to General Municipal Law §50-e(5) for leave to serve a late Notice of Claim upon the Respondents, and/or for such other further relief this Court deems just and proper.

The following factual account is asserted by Petitioner. According to Mitchell's affidavit, the alleged incident occurred on June 5, 2023 at approximately 11:27 a.m. on Nepperhan Avenue, at approximately 530 feet north of Lake Avenue in Yonkers, Westchester County, New York. Mitchell states that his vehicle was stopped unloading lawn debris at the Yonkers Organic yard, located at the

aforementioned location, when the City of Yonkers truck, bearing New York States license plate number BB5690, reversed into and struck Mitchell's vehicle, a 2020 Lexus motor vehicle bearing New York State license plate number KZK9419. As a result of the incident, Mitchell's vehicle sustained damage in the sum of \$23,883.63, which required repairs. Mitchell further contends that, following the subject accident, a Department of Public Works supervisor was notified and appeared at the accident scene (NYSCEF Doc. 4). According to the affidavit of Kimberlee Reith, a Claims Adjuster for Petitioner, Chubb National paid said amount, thus Chubb National became subrogated to the rights of its insured pursuant to the applicable insurance policy. (NYSCEF Doc. 3).

Petitioner's Application:

Petitioner commenced this proceeding pursuant to General Municipal Law §50-e(5), seeking to file a Late Notice of Claim in the aforesaid amount to recover against the Respondent, CITY OF YONKERS (hereinafter, "Respondent") as reimbursement for said amount paid by Petitioner related to its insured's (vehicle) property damage claim. Petitioner contends that the Respondent had actual knowledge of the incident. Mitchell contends that Department of Public Works supervisor, Brian Napoletano, was advised of the incident and appeared at the scene. (NYSCEF Doc. 4 at ¶6). Petitioner submitted the affidavit of Kimberlee Reith, a Claims Adjuster for Chubb National. Reith states that Chubb National sent communication to the Respondent within the 90-day statutory period, on August 10, 2023, and included the date of loss, name of its insured, and the loss location. The City then responded after the statutorily prescribed period, on September 6, 2023, advising that the correspondence needed to be in the form of a claim with specific information provided.

Respondent's Opposition:

Respondent, CITY OF YONKERS, contends that the Chubb National notification letter failed to comply with General Municipal Law §50-e (3)(a). Said letter was dated August 10, 2023 and served by regular mail on August 14, 2023 to 1130 Nepperhan Avenue, Yonkers, New York (City of Yonkers Service Center), which was then forwarded to the Office of the Corporation Counsel via inter-office mail and date-stamped at the Office of the Corporation Counsel's Office on August 23, 2023 (NYSCEF Doc. 14). As such, counsel contends that said letter failed to comply with the applicable statute insofar as the letter was not delivered personally or by registered or certified mail to any of the specific departments within the City of Yonkers authorized to accept service of process. Counsel states that the Respondent sent a rejection letter dated September 6, 2023. Respondent further contends that Petitioner failed to comply with General Municipal Law §50-e (3)(d) insofar as Petitioner failed to cure the service deficiency within ten (10) days after receipt of Respondent's September 6, 2023 rejection letter. Rather, Petitioner's application for leave to file a late notice of claim was delivered to the Office of the Corporation Counsel on January 30, 2024, nearly eight (8) months after the occurrence alleged herein, a delay of approximately five (5) months. Respondent further contends that Petitioner's application must be denied on the merits, as Petitioner's conclusory allegations fall short of the required elements for leave to file a late notice of claim.

Decision:

Pursuant to General Municipal Law § 50-e[1][a], a party seeking to commence an action against a public corporation must serve a notice of claim on the prospective defendant “within ninety days after the claim arises” (*Coronel v New Jersey Tr. Corp.*, 173 AD3d 828, 829 [2d Dept. 2019], citing *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 460 [2016] [internal quotation marks omitted]). “In determining a motion for leave to serve a late notice of claim or to deem a late notice of claim timely served nunc pro tunc, the court must consider all relevant circumstances” (*Lyles v New York City Health & Hosps. Corp.*, 121 AD3d 648, 649 [2014]; see General Municipal Law § 50-e[5]; *Hudson v Patel*, 146 AD3d 758, 759 [2d Dept. 2017]). Such circumstantial factors include whether: (1) “the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter,” (2) “the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim and for the subsequent delay in seeking leave to serve a late notice of claim,” and (3) “the public corporation was substantially prejudiced by the delay in its ability to maintain its defense on the merits” (*Lyles v New York City Health & Hosps. Corp.*, 121 AD3d at 649; see General Municipal Law § 50-e[5]; *Hudson v Patel*, 146 AD3d at 759).

In applying the aforementioned legal standard of review to the instant application, Petitioner has demonstrated entitlement to a court order, pursuant to General Municipal Law §50-e(5), granting leave to serve a late Notice of Claim upon the Respondents for the foregoing reasons. First, as to notice, the Respondent’s agent, City of Yonkers Department of Public Works supervisor, Brian Napoletano, was advised of the incident and appeared at the scene immediately after the incident. (NYSCEF Doc. 4 at ¶6). According to the Police Report, Mitchell’s vehicle was “severely damaged” and thus the alleged property damage was open, apparent, and readily observable by both Mitchell and the agent(s) of the City of Yonkers who were present at the scene of the incident (NYSCEF Doc. 5). Respondent was informed again, this time in written letter dated August 10, 2023, within the 90-day statutory notice period, which provided sufficient information knowledge of the accident, the date of loss, the location of loss, the name petitioner’s insured, and petitioner’s intent to subrogate. (NYSCEF Doc. 7). Contrary to Respondent’s contention, it is well settled that the “absence of a reasonable excuse for the delay does not bar the granting of the petition for leave to serve a late notice of claim where, as here, there is actual knowledge and an absence of prejudice.” (*Matter of St. Paul Guardian Ins. Corp. v. Pocatello Fire District*, 90 AD3d 761 [2d Dept. 2011]; see also, *Cruz v City of New York*, 149 AD3d 835 [2d Dept. 2017]).

ORDERED that, Petitioner’s application for a court order, pursuant to General Municipal Law §50-e, permitting Petitioner to serve a late notice of claim, is GRANTED. It is further

ORDERED that Petitioner is directed to serve Respondent with a Notice of Claim within thirty (30) days hereof upon its Corporation Counsel. It is further

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

The foregoing constitutes the Decision and Order of this Court.

Dated: April 16, 2024
White Plains, New York

E N T E R :



HON. THOMAS QUIÑONES, J.S.C.

TO: *Filed to NYSCEF*