SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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INDEX NO. 160135/2024

STEPHANIE HUMMEL,

MOTION DATE 10/30/2024

Petitioner,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, POLICE OFFICER HIEU TRAN, MAYOR ERIC ADAMS, COMM. EDWARD CABAN, POLICE OFFICERS JOHN DOE 1-10

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 16, 17, 18, 19 were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, this motion is decided as follows. Petitioner Stephanie Hummel ("Hummel") seeks leave to serve late notice of claim against respondents THE CITY OF NEW YORK (the "City"), POLICE OFFICER HIEU TRAN ("Tran"), MAYOR ERIC ADAMS, COMM. EDWARD CABAN, POLICE OFFICERS JOHN DOE 1-10 (collectively "respondents"). Respondents oppose the petition. For the reasons that follow, the petition is granted.

Facts

The relevant facts, which are based upon the Notice of Petition and Memorandum of Law in Support of Petition for Leave to Serve a Late Notice of Claim, are as follows. On May 17, 2024, Tran fired his service weapon and hit a motorist, Kishan Patel ("Patel"), causing a multi-vehicle accident which resulted in Hummel sustaining personal injuries.

On June 6, 2024, criminal charges were filed against Tran who was arrested shortly thereafter. On June 25, 2024, at a pre-trial detention hearing Tran was denied bail and has been

incarcerated since that date. On July 30, 2024, Patel served notice on the respondent City of New York via counsel and a statutory hearing was held pursuant to General Municipal Law § 50-h.

Hummel became aware that Tran had a history of alcoholism as a member of the New York City Police Department ("NYPD") on or around October 1, 2024 when a civil complaint was filed against the city of New York by Patel. Hummel filed the instant petition on October 30, 2024.

Discussion

Respondents oppose the petition, arguing that Hummel has failed to establish a reasonable excuse for the delay in filing a timely notice of claim, failed to show that respondents had actual knowledge of the essential facts constituting the claim, and failed to demonstrate that respondents will not be prejudiced by the delay in filing the notice of claim.

GML § 50-e(5) permits a claimant to apply for an order extending the time to file and serve the notice of claim. This statute provides in pertinent part as follows:

> In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter.

Further, key factors the court should consider in decided whether to grant or deny leave to serve late notice of claim include: [1] whether petitioner has demonstrated a reasonable excuse for the failure to file notice of claim within 90 days; [2] whether the municipality acquired actual notice of the essential facts constituting the claim within 90 days after it arose, or a reasonable time thereafter; and [3] whether the delay would substantially prejudice the municipality in defending the claim on the merits (*Matter of Nieves v New York Health & Hosps. Corp.*, 34 AD3d 336, 337 [1st Dept 2006]).

"[W]hile the presence or the absence of any one of the factors is not necessarily determinative, whether the municipality had actual knowledge of the essential facts constituting the claim is of great importance" (*Matter of Townson v New York City Health & Hosps. Corp.*, 158 AD3d 401, 402 [1st Dept 2018] [internal quotations omitted] quoting *Matter of Rojas v New York City Health & Hosps. Corp.*, 127 AD3d 870, 872 [2d Dept 2015]). So long as the determination is supported by the factors set forth in GML § 50-e(5) and evidence on the record, the supreme court's decision to grant or deny a motion to serve a late notice of claim is "purely a discretionary one" (*Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 465 [2016]).

Respondents first argue that Hummel has failed to offer a reasonable excuse for the delay in filing a timely notice of claim, stating that ignorance of the notice of claim requirement does not excuse the failure to serve a timely notice of claim (*Matter of Montero v City of New York*, 176 AD3d 614, 615 [1st Dept 2019]). Respondents also assert that time spent in the hospital for injuries suffered does not qualify as a reasonable delay unless medical documents are provided to support a claimed incapacity (*Montero v City of New York*, 176 AD3d 614, 615 [1st Dept 2019]). Hummel doesn't claim that the late notice was due to lack of knowledge that a notice must be filed or medical incapacity, but rather that she was not aware of Tran's history of alcoholism while a member of the NYPD until the filing of the Patel complaint on October 1, 2024. It is not until this complaint was filed that "the operative facts which form the basis of Plaintiff's claims, that Respondent failed to properly supervise its employee and take away his service weapon when it became aware of Officer Tran's alcohol abuse" became known to Hummel.

Respondents contend that an attorney's failure to conduct due diligence in investigating a client's potential claim does not constitute a reasonable excuse (*Matter of Alexander v County of*

Nassau, 227 AD3d 888, 889 [2d Dept 2024]). A reasonable excuse is only one of the factors used to determine whether to grant an extension to the notice requirement under GML § 50-e(5). In the *Matter of Alexander*, petitioner filed to serve late notice of claim on the County of Nassau and was denied for failing to do enough due diligence and identify that party as potentially liable (*id.*). However, petitioner had also failed to show that the County acquired timely and actual knowledge of the essential facts of the claim and failed to meet his burden of showing the seventeen-month delay would not substantially prejudice the County in defending the case on the merits (*id.* at 890).

On this record, the other two key factors, acquired actual knowledge and substantial prejudice, weigh positively in Hummel's favor. Here, respondents had actual knowledge of the essential facts of the action within ninety days and would not be prejudiced by the delay in defending the claim. Moreover, respondents do not deny having knowledge of the incident or conducting a criminal investigation on Tran, but rather that they had no actual knowledge of the claim as they did not have knowledge of the underlying legal theory (*see Matter of Felice v Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 148 [2d Dept 2008]). The Court does not find this argument availing, as the Personal Injury Claim Form submitted by Patel, which has been provided to the Court, contains the same legal theories upon which Hummel's claim is based. The claim form contains Tran's history of alcohol abuse and alleges that the City is liable under a theory of respondeat superior as they were aware of his problems with alcoholism and continued to employ Tran as an officer.

While respondents point out that Patel's notice of claim does not mention Hummel or the fact that Tran's actions caused a multi-vehicle accident, this argument is not persuasive. The City took Tran into custody after charges were placed on him by Camden County by NYPD Internal

Affairs Bureau Officers and had the opportunity to investigate the accident and surrounding facts for both the criminal charges against Tran and the Patel complaint against the City. A press release by the Office of the Camden County Prosecutor issued a press release on June 7, 2024 stating that the investigation was "assisted by the New York City Police Department Internal Affairs Bureau [and] New York County District Attorney's Office Police Accountability Unit". Therefore, respondents were aware that Tran engaged in tortuous conduct while intoxicated which resulted in the multi-vehicle accident that led to Hummel's personal injuries.

Respondents argue that the fact that an NYPD investigation occurred does not obviate the City from the need to conduct their own investigation (*Deegan v City of New York*, 227 AD2d 620, 620 [2d Dept 1996]) or impart the knowledge from the police department to the City (*Matter of Alexander*, 227 AD3d at 889). Here, Hummel is not simply relying on the existence of a police report or investigation, but that a similar suit has already been filed against respondents in an action that revolves around the same common nucleus of operative facts. The notice of claim filed by Patel put the respondents on notice of the incident and gave them ample opportunity to investigate the essential facts within ninety days of the occurrence, prior to Hummel's late notice of claim.

Finally, respondents argue that the delay in notice has caused prejudice as approximately three months passed after the ninety-day period to serve a notice of claim, and that "[h]ad the City been given timely notice of the claim, it would have had an opportunity to view the involved vehicles before they were affected by time or elements. And if those vehicles have since been destroyed, the City has been forever deprived of the opportunity to inspect them."

Respondents rely primarily on *Matter of Newcomb* to support their position that they would be prejudiced by the delay, claiming that Hummel failed to meet her burden by presenting

"some evidence or plausible argument that supports a finding of no substantial prejudice" while conceding that passage of time alone is not sufficient to find substantial prejudice (28 N.Y.3d at 466-67). For the reasons mentioned above, the Court disagrees. Hummel's argument correctly points out that respondents will be performing discovery and defending claims in the Patel action regardless of whether Hummel is permitted to serve a late notice of claim. Both actions revolve around the alleged negligence by the City in continuing to employ an officer with substance abuse issues. Respondents have not shown how they will be prejudiced by the inability to inspect Hummel's vehicle, nor have they shown the vehicle was destroyed and that they will be unable to examine it.

Assuming, *arguendo*, that the vehicle was destroyed or otherwise unavailable for inspection, the essential facts of the action revolve around the alleged negligence of the respondents and the accident it caused. Respondents assert that inspection of the vehicle would provide the City with "important information concerning the nature and severity of the impact, an issue that directly bears on the injuries petitioner allegedly sustained." While this is true, these facts relate to the damages suffered by Hummel rather than the underlying legal theory of negligence against respondents and do not significantly prejudice respondents' ability to defend the merits of the claim.

For the reasons above, the petition is granted.

Conclusion

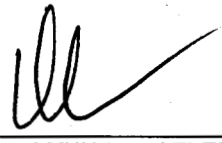
Based on the foregoing, it is hereby

ORDERED that the notice of claim in the proposed form annexed to the moving papers as Exhibit A shall be deemed timely served *nunc pro tunc* upon service of a copy of this decision, order and judgment with notice of entry thereof upon the respondents The City of New

York, Police Officer Hieu Tran, Mayor Eric Adams, Comm. Edward Caban, and Police Officers John Doe 1-10; and it is further

ORDERED that the Statue of Limitations is stayed through notice of entry of this decision/order.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.



3/11/2025
DATE

LYNN R. KOTLER, J.S.C.

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