

Matter of Colon v Metropolitan Tr. Auth.

2025 NY Slip Op 32692(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 156160/2024

Judge: Richard Tsai

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD TSAI PART 21

Justice

-----X

In the Matter of the Application of

JOSE COLON, as the Administrator of the Estate of Donna Colon,

Petitioner,

- v -

THE METROPOLITAN TRANSIT AUTHORITY,
THE NEW YORK CITY TRANSIT AUTHORITY, and
THE CITY OF NEW YORK,

Respondents.

-----X

INDEX NO. 156160/2024
MOTION DATE 09/05/2024
MOTION SEQ. NO. 001

**DECISION, ORDER, and
JUDGMENT ON PETITION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-30 were read on this petition for LEAVE TO SERVE A LATE NOTICE OF CLAIM.

Upon the foregoing documents, it is **ADJUDGED** that the petition for leave to serve late notices of claim is **GRANTED IN PART TO THE EXTENT THAT** leave is granted as to respondents Metropolitan Transportation Authority, sued herein as Metropolitan Transit Authority and New York City Transit Authority, and petitioner must serve a notice of claim upon these respondents within 60 days of service of a copy of this decision, order, and judgment with notice of entry; and it is further

ADJUDGED that the petition is denied as to respondent City of New York; and it is further

ORDERED that petitioner must purchase a new index number to commence an action in the event a lawsuit arising from the notice of claim is filed.

Petitioner seeks leave to serve a late notice of claim upon respondents, which alleges that, sometime between 10:00 p.m. on August 19, 2023 through 2:00 a.m. on August 20, 2023, decedent Donna Colon fell or was pushed onto the tracks of the southbound 4 train at the 86th Street Station of the 4, 5, 6 subway line, and she was struck by a train entering the station, causing her fatal injuries. Respondents oppose the petition.

The petition is denied with respect to respondent City of New York (City).

“Leave is not appropriate for a patently meritless claim” (*Matter of Catherine G. v County of Essex*, 3 NY3d 175, 179 [2004]; *Swinton v City of New York*, 61 AD3d 557, 558 [1st Dept 2009]). Here, as the City points out, it is an out-of-possession owner, having leased the subway system to the New York City Transit Authority pursuant to a 1953 lease with the City (see City’s Exhibit A in opposition [NYSCEF Doc. No. 23]). The petitioner does not dispute this, for petitioner submitted the very same lease in support of the petition (see petitioner’s Exhibit G in support of petition [NYSCEF Doc. No. 9]).

The proposed notice of claim alleges that respondents failed “to take the necessary safety precautions to protect customers from being shoved or pushed into a moving subway train,” such as installing platform edge protection/safety and platform edge barriers/devices, and track Intrusion Devices, among other things (see petitioner’s Exhibit A in support of petition ¶ 2).

“It is well settled that “[a] landlord is not generally liable for negligence with respect to the condition of property after its transfer of possession and control to a tenant unless the landlord is either contractually obligated to make repairs or maintain the premises, or has a contractual right to reenter, inspect and make needed repairs at the tenant’s expense, and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision” (*Malloy v Friedland*, 77 AD3d 583, 583 [1st Dept 2010] [internal citation omitted]).

Here, the City has a limited contractual right to reenter to make repairs, pursuant to Section 8.2 of the lease. Section 8.2 states,

“Subject to the provisions of Section 8.3 of this Article VIII, the City, through its duly designated officers and employees, shall have the right to enter upon the Leased Property with men, equipment, trucks and vehicles for the purpose of making repairs, replacements, extensions and relocations of *such service facilities* as shall be necessary in the opinion of the City” (Exhibit E, at 20 [emphasis supplied]).

Although “service facilities” is not defined in Section 8.2, it is mentioned in Section 8.1, which states,

“The Authority and the City recognize that in, on or across the Leased Property there are presently located sewers, water mains, sludge lines, tanks, power lines, telephone lines *and other service facilities of the City used for other than transit purposes* and also recognize that the maintenance of such service facilities is reserved to and the duty of the City” (Exhibit E, at 20).

“Under the rule of ejusdem generis, the meaning of a word in a series of words is determined ‘by the company it keeps.’ ‘A series of specific words describing things or

concepts of a particular sort are used to explain the meaning of a general one in the same series” (*Lend Lease [U.S.] Constr. LMB Inc. v Zurich Am. Ins. Co.*, 136 AD3d 52, 57 [1st Dept 2015], *affd* 28 NY3d 675 [2017] [internal citations omitted]).

Thus, “service facilities” must be construed to refer to something that is similar to “sewers, water mains, sludge lines, tanks, power lines, or telephone lines.” Thus, the City simply does not have the right to reenter the subway system to install safety devices upon the platforms, tracks, and tunnels that petitioner contends should have been present. Petitioner fails to show that the City falls under right of reentry exception.

In light of the court’s determination, the court does not reach the City’s remaining arguments.

The petition is granted as to respondents Metropolitan Transportation Authority (MTA), sued herein as the Metropolitan Transit Authority, and New York City Transit Authority (NYCTA).

Petitioner established that the MTA and NYCTA had timely actual knowledge of the essential facts constituting the claims and “demonstrated that NYCTA had the opportunity to investigate the essential facts in a timely manner, establishing that petitioner’s delay did not cause substantial prejudice to NYCTA” (*Rijos v New York City Tr. Auth.*, 227 AD3d 452, 453 [1st Dept 2024], *lv denied* 43 NY3d 903 [2025]). Petitioner submitted documents from the NYCTA’s investigation (see petitioner’s Exhibit C in support of petition [NYSCEF Doc. No. 5]).

The MTA and NYCTA argue that they did not timely acquire actual knowledge of the essential facts, in that they acquired knowledge of the accident itself, but not knowledge of their wrongdoing, citing *Alexander v New York City Transit Authority* (200 AD3d 509 [1st Dept 2021]). However, this exact argument was raised in the appeal in *Rijos* (see NYSCEF Doc. No. 5, brief for respondent-appellant in *Rijos v New York City Tr. Auth.*, Appellate Division, First Department, index no. 2023-06721, at 14-15), which the Appellate Division, First Department necessarily rejected when it affirmed the decision of the court below granting the petitioner leave to serve a late notice of claim. This case is on all fours with *Rijos*, which also involved a train strike incident.

As the MTA and NYCTA point out, petitioner did not demonstrate a reasonable excuse for the late service of the notice of claim. However, “where there is actual notice and absence of prejudice, the lack of a reasonable excuse will not bar the granting of leave to serve a late notice of claim” (*Guerre v New York City Tr. Auth.*, 226 AD3d 897, 898 [2d Dept 2024] [quotation marks and citation omitted]; *Clarke v New York City Tr. Auth.*, 222 AD3d 552, 553 [1st Dept 2023] [“the failure to offer a reasonable excuse is not necessarily fatal to a motion for leave to serve a late notice”]).

Thus, the petition to serve a late notice of claim is granted as to the MTA and NYCTA.

Generally speaking, when leave to serve a late notice of claim is granted, and where, as here, a proposed notice of claim is annexed to the petition, the court could deem the proposed notice of claim served, *nunc pro tunc*, upon service of a copy of the decision, order, and judgment that granted leave, in lieu of requiring service of the proposed notice of claim in accordance with General Municipal Law § 50-e (3).

However, in reply, petitioner’s counsel admits that the proposed notice of claim contains an error—that petitioner Jose Colon was not issued letters of administration nor granted the authority to initiate an action for wrongful death or other negligence on behalf of the estate of Donna Colon (reply affirmation of petitioner’s counsel ¶¶ 1-6 [NYSCEF Doc. No. 26]). Rather, petitioner was granted a Certificate of Voluntary Administration, which allowed him to collect the decedent’s personal effects (see petitioner’s Exhibit B in reply [NYSCEF Doc. No. 28]).

In light of the error, the court will therefore grant petitioner additional time to serve a notice of claim upon the MTA and NYCTA that reflects petitioner’s correct status.



20250723200921RTSAIB6DE5883754E4A9EAAA1DE2678A5A4DD

7/23/2025		RICHARD TSAI, J.S.C.
DATE		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE