

Jobe v New York City Tr. Auth.

2025 NY Slip Op 32693(U)

July 21, 2025

Supreme Court, New York County

Docket Number: Index No. 156260/2020

Judge: Richard Tsai

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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

SALIEU JOBE,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY D/B/A MTA NEW
YORK CITY TRANSIT, METROPOLITAN TRANSIT
AUTHORITY, CITY OF NEW YORK and THE NEW YORK
CITY DEPARTMENT OF TRANSPORTATION,

Defendants.

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INDEX NO. 156260/2020

MOTION DATE 07/10/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 79-89, 91-93 were read on this motion to/for LEAVE TO FILE.

In this personal injury action, plaintiff Salieu Jobe alleges that, on April 19, 2025, he was riding his bicycle along Central Park North when he was struck by an unidentified M4 Bus (exhibit C in support of motion [NYSCEF Doc. No. 84], original bill of particulars ¶¶ 12, 18).

There is no dispute that plaintiff timely served a notice of claim on defendants New York City Transit Authority and Metropolitan Transportation Authority (collectively, the Transit Defendants) on or about July 16, 2019 (affirmation in support of motion [NYSCEF Doc. No. 80] ¶ 15). In that original notice of claim, plaintiff specified that the time of the subject accident was "approximately 5:25 p.m" (exhibit B in support of motion [NYSCEF Doc. No. 83], original notice of claim ¶ 3). However, plaintiff asserts that, over the course of discovery in this action, it was revealed that the correct time of the accident was 4:39 p.m. (see affirmation in support of motion ¶¶ 18-20).

On this motion, plaintiff seeks to amend his notice of claim, complaint and bill of particulars to reflect the accurate time of the accident as 4:39 p.m. on April 19, 2019, and to deem the corrected versions filed and served *nunc pro tunc* (notice of motion [NYSCEF Doc. No. 79]). The Transit Defendants oppose the motion.

DISCUSSION

I. Branch of Motion Seeking to Amend the Notice of Claim

“A timely and sufficient notice of claim is a condition precedent to asserting a tort claim against a municipality or public benefit corporation. A notice of claim must set forth, inter alia, the nature of the claim, and the time, place, and manner in which the claim arose. The purpose of the statutory notice of claim requirement is to afford the public corporation an adequate opportunity to investigate the circumstances surrounding the claim and to explore the merits of the claim while information is still readily available. Pursuant to General Municipal Law § 50–e(6), a notice of claim may be amended only to correct good faith and nonprejudicial technical mistakes, omissions, or defects, but not to substantively change the nature of the claim or the theory of liability” (*Mitchell v Jimenez*, 233 AD3d 773, 774 [2d Dept 2024] [internal quotation marks, citations and emendation omitted]).

A. Good Faith

On this motion, plaintiff’s counsel contends that plaintiff was “not keeping time at the time that he was hit by the MTA bus” and that plaintiff and his counsel “deduced” the time of accident as 5:25 p.m. based on a police accident report (affirmation in support of motion ¶ 10; see also exhibit H in support of motion [NYSCEF Doc. No. 89], police accident report).

In opposition, Transit Defendants do not contest the good faith nature of such a mistake, and the court has “no basis to suspect that the plaintiff’s . . . [mistake] was made in bad faith” (*Pisano v Metropolitan Transp. Auth.*, 191 AD3d 907 [2d Dept 2021]).

B. Prejudice

On this motion, plaintiff has established that the amendment only seeks to correct the time of the accident by less than an hour and that the Transit Defendants have “had actual knowledge of the facts of the accident since the claim was first asserted” when the original notice of claim was served (affirmation in support of motion ¶¶ 5-6). Plaintiff further states that, “[u]pon information and belief, the Defendants have not undertaken any meaningful investigation nor have they genuinely assessed the merits of the Claimant’s allegations as this case has been stalled in discovery for some time now” (*id.* ¶ 7). Thus, plaintiff has “met his initial burden of showing a lack of prejudice” (*Jordan v City of New York*, 41 AD3d 658, 660 [2d Dept 2007]).

In opposition, the Transit Defendants argue that they would be prejudiced by the amendment namely because the original notice claim “fixed the time of accident as 5:25 p.m.” and they “duly investigated that time period upon receipt of the notice of claim and

found no reported incident that matched the details provided by plaintiff” (affirmation in opposition to motion [NYSCEF Doc. No. 92] ¶ 7).

The original notice of claim report stated that “[t]he operator of the aforementioned MTA M4 Bus then failed to remain at the scene of the accident. Police were called and the incident was reported” (original notice of claim ¶ 3). Thus, because the bus allegedly left the scene, the lack of any incident reports is hardly surprising. More importantly, the Transit Defendants are essentially in the same position of an unreported hit and run, even if the original notice of claim had correctly listed the time of the accident as 4:39 p.m.

Transit Defendants point out that the video of accident—that is apparently timestamped, but not included on this motion—“was first exchanged by plaintiff with a discovery response dated June 16, 2023, nearly two years prior to the instant motion” (affirmation in opposition ¶ 8). Although Transit Defendants argue that plaintiff should have “realized then the mistake in time” and made this motion (*id.*), plaintiff contends that he “needed to verify and be certain of the discrepancy and likely awaited further discovery (such as deposition testimony) before approaching the Court” (reply affirmation in further support of motion [NYSCEF Doc. No. 93] ¶ 21).

Regardless of whether this motion could have been made two years sooner, Transit Defendants have not put forward any basis for how they were prejudiced in their defense of this action because this motion was not brought two years earlier. Indeed, as plaintiff points out, because this video was produced two years ago, Transit Defendants were aware since then that “that the accident actually occurred around 4:39 p.m., and it cannot credibly claim to be blindsided now” (reply affirmation in further support of motion ¶ 11; *see also Hernandez v City of New York*, 2025 NY Slip Op 03312 [2d Dept June 4, 2025] [“the mere passage of time, without more, was insufficient to constitute substantial prejudice to the defendants”])

Thus, the court finds that allowing the proposed amendment to the notice of claim will not prejudice the Transit Defendants, as the information contained in the original notice “was sufficient to enable the [Transit Defendants] to commence an investigation” (*Perry v City of New York*, 246 AD2d 380, 381 [1st Dept 1998]).

C. Substantive Change

On this motion, there is no dispute that plaintiff only seeks to amend the notice of claim to change the time of accident from 5:25 p.m. to 4:39 p.m. and does not seek to add a new theory of liability to the notice of claim. Thus, “the proposed amendment to the accident date was purely technical in nature and did not substantively change the nature of the claim” (*Hernandez*, 2025 NY Slip Op 03312, at 2).

II. Branch of Motion Seeking to Amend the Complaint and Bill of Particulars

“Leave to amend pleadings, including a bill of particulars, is to be freely given, absent prejudice or surprise. Where there is extended delay in moving to amend, an affidavit of reasonable excuse for the delay in making the motion and an affidavit of merit should be submitted in support of the motion. In the absence of prejudice, mere delay is insufficient to defeat the amendment. Prejudice requires some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position” (*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364, 365 [1st Dept 2007] [internal citations and quotation marks omitted]).

For the same reasons as stated above regarding the amendment to the notice of claim, the court finds that there is no prejudice or surprise to defendants by the proposed amendment of the notice of claim.

Therefore, leave to amend the complaint and the bill of particulars is also granted.

CONCLUSION

Accordingly, it is hereby **ORDERED** that the plaintiff’s motion for leave to amend the notice of claim, complaint and bill of particulars herein is **GRANTED**, and the proposed amended notice of claim, complaint and bill of particulars (plaintiff’s Exhibit E [NYSCEF Doc. No. 86], proposed amended notice of claim; plaintiff’s Exhibit F [NYSCEF Doc. No. 87], proposed amended complaint; plaintiff’s Exhibit G [NYSCEF Doc. No. 88], proposed amended bill of particulars) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the parties are reminded to appear for the previously scheduled status conference on **August 7, 2025**, at **9:30 AM** in courtroom **280** at 80 Centre Street, New York, NY.

This constitutes the decision and order of the court.



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7/21/2025

DATE

RICHARD TSAI, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE