

Malcolm v New York City Tr. Auth.

2025 NY Slip Op 32788(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 157947/2024

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

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PRUDENCE MALCOLM,

Petitioner,

- v -

NEW YORK CITY TRANSIT AUTHORITY, MTA BUS COMPANY, METROPOLITAN TRANSIT AUTHORITY, AND JOHN DOE SAME NAME BEING FICTITIOUS THE REAL NAME BEING UNKNOWN SAID INDIVIDUAL BEING THE OPERATOR OF THE OFFENDING VEHICLE,

Respondents.

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INDEX NO. 157947/2024
MOTION DATE 10/31/2024
MOTION SEQ. NO. 001

**DECISION, ORDER +
JUDGMENT ON PETITION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-19 were read on this petition for LEAVE TO SERVE A LATE NOTICE OF CLAIM.

Upon the foregoing documents, it is **ADJUDGED** that the petition to serve a late notice of claim upon respondents is **GRANTED IN PART TO THE EXTENT** that leave is granted as to respondent New York City Transit Authority, and the proposed notice of claim annexed to the petition as Exhibit 1 is deemed timely served, *nunc pro tunc*, upon respondent New York City Transit Authority upon 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 the other respondents; 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, alleging that, on September 29,2023, at approximately 5:00 p.m., the doors of MTA Bus# 3428 on the BXM10 route suddenly and violently closed on her as she was attempting to board the bus, causing her to fall backward and sustain serious and permanent injuries (petition ¶ 6 [NYSCEF Doc. No. 1]).

Respondent New York City Transit Authority (NYCTA) opposes the petition. According to the NYCTA, the BXM10 route is a route of the MTA Bus Company, not the NYCTA (affirmation of NYCTA’s counsel in opposition ¶ 8 [NYSCEF Doc. No. 18]). According to DMV records, Bus #3428 is registered to “MTA; Bus; Company” (see Exhibit B in opposition [NYSCEF Doc. No. 17]).

The petition is denied as academic as to respondent MTA Bus Company. The MTA Bus Company is a subsidiary corporation of the Metropolitan Transportation Authority (MTA) (see *Rampersaud v Metropolitan Transp. Auth.*, 73 AD3d 888 [2d Dept 2010]). A notice of claim is not required for subsidiaries of the MTA (see Public Authorities Law § 1276 [6]; see *Andersen v Long Is. R.R. Auth.*, 59 NY2d 657 [1983]; see also *Burgess v Long Is. R.R. Auth.*, 172 AD2d 302 [1991]; *Stampf v Metropolitan Transp. Auth.*, 57 AD3d 222 [1st Dept 2008]).¹

The petition is denied as to respondent Metropolitan Transit Authority, which is not a legal entity that exists.²

The petition is denied as academic as to respondent John Doe. Assuming that John Doe is an employee of the NYCTA, there is no statutory or legal authority to require service of a notice of claim upon the employee, but rather only upon the NYCTA itself (see Public Authorities Law § 1212 [4]). Assuming that John Doe is an employee of the MTA Bus Company, as discussed above, a notice of claim is not required for the MTA Bus Company.

As to the NYCTA, under General Municipal Law § 50-e (5), courts have discretion to grant an extension of time for service of a notice of claim.

“In determining whether to grant or deny leave to serve a late notice of claim, the court must consider ‘in particular’ whether the municipality ‘acquired actual knowledge of the essential facts constituting the claim within [90 days of the claim’s accrual] or within a reasonable time thereafter.’ Courts are to place ‘great weight’ on this factor, which the party seeking leave has the burden of establishing through the submission of nonspeculative evidence” (*Matter of Jaime v City of New York*, 41 NY3d 531 [2024] [internal citations omitted]).

“Additionally, the statute requires the court to consider ‘all other relevant facts and circumstances’ and provides a ‘nonexhaustive list of factors that the court should weigh’. One factor the court must consider is ‘whether the

¹ Although a notice of claim is not required, Public Authorities Law § 1276 (1) nevertheless requires that a complaint in an action must allege that a pre-suit demand was made upon the subsidiary at least 30 days prior to commencement of suit against the subsidiary, and that the subsidiary “neglected or refused to make an adjustment or payment thereof” (see *Andersen*, 59 NY2d at 661).

² To the extent that petitioner meant to refer to the MTA, the claims against the MTA would be patently meritless. “It is well settled, as a matter of law, that the functions of the MTA with respect to public transportation are limited to financing and planning, and do not include the operation, maintenance, and control of any facility” (*Delacruz v Metropolitan Transp. Auth.*, 45 AD3d 482, 483 [1st Dept 2007]; see also *Archer v New York City Tr. Auth.*, 187 AD3d 564 [1st Dept 2020]).

delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits” (*Matter of Newcomb v Middle Country Cent. School Dist.*, 28 NY3d 455, 460-461 [2016] [internal citation omitted]).

The Appellate Divisions have held that courts must also consider whether petitioner has a reasonable excuse for the delay, but the “failure to offer a reasonable excuse is not necessarily fatal” (*Clarke v New York City Tr. Auth.*, 222 AD3d 552, 553 [1st Dept 2023]; *Guerre v New York City Tr. Auth.*, 226 AD3d 897, 898 [2d Dept 2024]). “[W]here 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*, 226 AD3d at 898 [quotation marks and citation omitted]). Thus, petitioner essentially needs to prove only the first two factors to be entitled to leave to serve a late notice of claim.

Reasonable excuse

Here, petitioner has not provided a reasonable excuse for her delay in serving the notices of claim.

Actual knowledge of the essential facts

Petitioner contends that respondents had actual knowledge of the incident because their employee caused the incident (see petition ¶¶ 21-22). Additionally, petitioner contends that respondents received an application for no-fault benefits from petitioner, which indicated the circumstances behind the accident, prior to the 90 day statutory deadline to file the notice of claim (petition ¶ 23).

To the extent that petitioner is arguing that actual knowledge was imputed to respondents because their employee allegedly caused the incident, the Court of Appeals rejected this argument, reasoning

“Allowing imputation in every case would undermine the purpose of the notice of claim requirement because not every employee’s knowledge will necessarily afford the municipality an opportunity to commence a prompt investigation. Generally, knowledge of essential facts as to time and place by an actor *in a position to investigate* will suffice” (*Matter of Jaime*, 41 NY3d at 540 [emphasis added]).

Because the bus operator is not in a position to investigate, the bus operator’s alleged knowledge of the incident is not sufficient.

On October 27, 2023, petitioner’s counsel sent a letter of representation together with a no-fault application to respondents (affirmation of petitioner’s counsel ¶ 13). According to petitioner’s counsel, on November 13, 2023, “Sheryl” called petitioner’s counsel requesting additional information regarding the bus route and location of the accident (*id.* ¶ 14). On November 15, 2023 and December 4, 2023, petitioner’s counsel

purportedly provided respondents with a “Claimant Verification of Facts” form (*id.* ¶ 15; see also petitioner’s Exhibits 5 & 6 [NYSCEF Doc. Nos. 8 and 9]).

Petitioner's attorney's correspondence with the NYCTA, which included petitioner’s no-fault application, was sufficient to provide actual knowledge of the essential facts constituting plaintiff’s claim within 90 days of the incident (see *Loughlin v New York City Tr. Auth.*, 125 AD3d 496, 497 [1st Dept 2015]). Like *Loughlin*, counsel’s letter clearly informed the NYCTA that counsel had also been retained to represent plaintiff for “personal injuries” (see petitioner’s Exhibit 4 [NYSCEF Doc. No. 6]).

Therefore, the NYCTA timely acquired actual knowledge of the essential facts constituting petitioner’s claims.

Substantial prejudice

“[T]he burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation. Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice” (*Matter of Newcomb*, 28 NY3d at 466).

Here, petitioner's evidence showing that the NYCTA had actual notice of the facts constituting the claim within 90 days of the accident or a reasonable time provides a ‘plausible argument’ that the NYCTA will not be substantially prejudiced in investigating and defending the claim” (*Matter of Dubuche v New York City Tr. Auth.*, 230 AD3d 1026, 1027 [1st Dept 2024]).

The NYCTA did not contend that it would suffer any prejudice.

Merits of the claims against the NYCTA

“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]).

However, in this case, the NYCTA did not establish that petitioner’s claims against the NYCTA are patently meritless. The DMV records which showed that the bus was registered to the MTA Bus Company were not certified. Additionally, the NYCTA did not rule out the possibility of liability under respondeat superior, if the NYCTA were the employer of the bus driver (*Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

Given that petitioner has demonstrated that the NYCTA had timely acquired actual knowledge of the essential facts constituting petitioner’s claim, and the NYCTA failed to demonstrate that it would suffer substantial prejudice, the petition for leave to

serve a late notice of claim is therefore granted as to the NYCTA.



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<u>7/25/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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