

Matter of Sims v City of New York

2025 NY Slip Op 32793(U)

August 7, 2025

Supreme Court, New York County

Docket Number: Index No. 151216/2025

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 151216/2025

IN THE MATTER OF THE APPLICATION OF JEAN SIMS

MOTION DATE 01/27/2025

Petitioner,

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14 were read on this motion to/for AMEND CAPTION/PLEADINGS

APPEARANCES:

Peter P. Ferraiuolo, Esq., PLLC, New York (Peter P. Ferraiuolo, Esq.), for plaintiff.

HON. EMILY MORALES-MINERVA, J.S.C.

In this application, JEANS SIMS (petitioner) moves, pursuant to General Municipal Law (GML) § 50-e (6), for leave to amend her notice of claim to correct the date of the alleged accident from July 19, 2024, to July 18, 2024, and to deem the amended notice of claim timely filed nunc pro tunc. CITY OF NEW YORK (respondent) does not appear or oppose. For the reasons set forth below, the application is granted.

Petitioner initially filed a notice of claim with the New York City Comptroller on October 8, 2024, alleging that on July 19, 2024, at approximately 10:30 a.m., she was lawfully present within the first-floor hallway of the New York City Human

Resources Administration facility located at 109 East 16th Street, New York, New York, when she was caused to slip and fall due to a slippery, wet, uneven, hazardous, and dangerous condition on the floor (see New York State Courts Electronic Filing [NYSCEF] Doc. No. 003, Affirmation in Support of Petition; see also NYSCEF Doc. No. 005, Personal Injury Claim Form). Petitioner asserted that, because of the fall, she was "violently precipitated" to the ground and sustained severe personal injuries, including, but not limited to, head trauma, right knee injury with torn ligaments, and back pain. Photographs of the accident location were annexed to the filing.

Petitioner now moves, by way of this motion (sequence no. 001), to amend the notice of claim solely to correct the date of the incident from July 19, 2024, to July 18, 2024. She avers, that the error was an innocent mistake made in good faith and discovered only after review of contemporaneous medical records from Lenox Hill Hospital and the New York City Human Resources Administration Security Incident Report, both of which confirm the incident occurred on July 18, 2024, at approximately 10:14 a.m. (see NYSCEF Doc. No. 001, Petition). The NYCHRA security incident report reflects that City employees responded to the scene within one minute of the fall, called EMS at 10:15 a.m., and that petitioner was transported by ambulance to NYU Langone

Hospital for further treatment at 10:37 a.m. (see NYSCEF Doc. No. 010, NYCHRA Security Incident Report).

The first issue which the court must assess -- is whether service of the petitioner's application to amend the notice of claim was effected in accordance with the statutory requirements so as to place the motion properly before the court.

GML § 50-e (3)¹ lays down the prescribed method of serving such a notice of claim. GML § 50-e(3)(a) prescribes the

¹ N.Y. Gen. Mun. Law § 50-e (3) [McKinney]

3. How served; when service by mail complete; defect in manner of service; return of notice improperly served.

(a) The notice shall be served on the public corporation against which the claim is made by delivering a copy thereof personally, or by registered or certified mail, to the person designated by law as one to whom a summons in an action in the supreme court issued against such corporation may be delivered, or to an attorney regularly engaged in representing such public corporation or, in a city with a population of over one million, by electronic means in a form and manner prescribed by such city.

(b) Service by registered or certified mail shall be complete upon deposit of the notice of claim, enclosed in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States post office department within the state.

(c) If the notice is served within the period specified by this section, but in a manner not in compliance with the provisions of this subdivision, the service shall be valid if the public corporation against which the claim is made demands that the claimant or any other person interested in the claim be examined in regard to it, or if the notice is actually received by a proper person within the time specified by this section, and the public corporation fail to return the notice, specifying the defect in the manner of service, within thirty days after the notice is received.

(d) If the notice is served within the period specified by this section and is returned for the reason and within the time provided in this subdivision, the claimant may serve a new notice in a manner complying with the provisions of this subdivision within ten days after the returned notice is received. If a new notice is so served within that period, it shall be deemed timely served.

(e) If the notice is served by electronic means, as defined in paragraph two of subdivision (f) of rule twenty-one hundred three of the civil practice law and rules, it shall contain the information required under the provisions of subdivision two of this section. In addition, such notice shall contain the following declaration: "I certify that all information contained in this notice is true and correct to the best of my knowledge and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties and civil liabilities." Service

proper method of service for a notice of claim. It provides that such notice must be served upon the public corporation either by personal delivery, by registered or certified mail, or, in cities with populations exceeding one million, by authorized electronic means. Service must be made upon the person designated by law to receive service of a summons in an action commenced in the Supreme Court, or upon an attorney regularly engaged in representing the public corporation. Although § 50-e (3) speaks broadly to the service of the initial notice of claim, its provisions apply equally when a claimant seeks to amend a previously served notice, as the method of service remains governed by the statute's procedural framework.

of the notice shall be complete upon successful transmission of the notice as indicated by an electronic receipt provided by such city, which shall transmit an electronic receipt number to the claimant forthwith.

(f) Service of a notice of claim on the secretary of state as agent of any public corporation, as defined in subdivision one of section sixty-six of the general construction law, whatsoever created or existing by virtue of the laws of the state of New York upon whom service of a notice of claim is required as a condition precedent to being sued, may be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such notice of claim together with the statutory fee, which fee shall be a taxable disbursement but only in the amount equal to the portion of the fee collected by the public corporation in accordance with subdivision four of this section. Service on such public corporation shall be complete when the secretary of state is so served. Within ten days after receiving a notice of claim, the secretary of state shall either: (1) send one of such copies by certified mail, return receipt requested, to such public corporation, at the post office address on file in the department of state, specified for the purpose; or (2) electronically transmit a copy to such public corporation at the electronic address on file with the department of state specified for that purpose; or (3) transmit a copy to such public corporation by any other such means or procedure established by the secretary of state, provided that such other means or procedure of transmittal must be verifiable.

CPLR 311² lays down the method of personal service upon a corporation or governmental subdivision. CPLR 311(a)(2) further provides that personal service upon a city shall be made by delivering the summons to the corporation counsel or to any person designated to receive process.

The original notice of claim was served on October 8, 2024, within ninety days of accrual, by delivery to the Corporation Counsel, thereby satisfying the requirements of GML § 50-e (3). The present application to amend was served on January 28, 2025, via email to the Corporation Counsel's designated service

² N.Y. C.P.L.R. 311 (a) Personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows:

1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. A business corporation may also be served pursuant to section three hundred six or three hundred seven of the business corporation law. A not-for-profit corporation may also be served pursuant to section three hundred six or three hundred seven of the not-for-profit corporation law;
2. upon the city of New York, to the corporation counsel or to any person designated to receive process in a writing filed in the office of the clerk of New York county;
3. upon any other city, to the mayor, comptroller, treasurer, counsel or clerk; or, if the city lacks such officers, to an officer performing a corresponding function under another name;
4. upon a county, to the chair or clerk of the board of supervisors, clerk, attorney or treasurer;
5. upon a town, to the supervisor or the clerk;
6. upon a village, to the mayor, clerk, or any trustee;
7. upon a school district, to a school officer, as defined in the education law; and
8. upon a park, sewage or other district, to the clerk, any trustee or any member of the board.

(b) If service upon a domestic or foreign corporation within the one hundred twenty days allowed by section three hundred six-b of this article is impracticable under paragraph one of subdivision (a) of this section or any other law, service upon the corporation may be made in such manner, and proof of service may take such form, as the court, upon motion without notice, directs.

address, with confirmation of receipt issued by the Law Department, and again on February 4, 2025, by personal delivery at 100 Church Street to an individual designated to accept service. These acts constitute service in compliance with CPLR 311(a)(2) (see NYSCEF Doc. No. 13, Affirmation of Service; see also NYSCEF Doc. No. 14, Affirmation of Service).

Accordingly, the court finds that service of both the original notice of claim and the instant application to amend was effected in accordance with the applicable statutory provisions, and the application is properly before the court. Since, the service requirements are met, the court next assesses the merit of the application.

GML § 50-e (6)³ authorizes a court, in its discretion, to permit correction of "a mistake, omission, irregularity or defect" in a notice of claim, provided the mistake was made in good faith and the public corporation is not prejudiced thereby. Courts have routinely granted such relief to correct the date of an accident, even years after the occurrence, where no prejudice is shown (see Arroyo v N.Y.C. Hous. Auth., 12 AD3d 254 [1st Dept

³New York General Municipal Law Section 50-e (6)- Mistake, omission, irregularity or defect. At any time after the service of a notice of claim and at any stage of an action or special proceeding to which the provisions of this section are applicable, a mistake, omission, irregularity or defect made in good faith in the notice of claim required to be served by this section, not pertaining to the manner or time of service thereof, may be corrected, supplied or disregarded, as the case may be, in the discretion of the court, provided it shall appear that the other party was not prejudiced thereby.

2004]; see also Bowers v City of N.Y., 147 AD3d 894 [2d Dept 2017]; see also Connors v Cty. of Erie, 214 AD3d 1404 [4th Dept 2023]).

Here, petitioner has demonstrated that the incorrect date in the original notice of claim was the result of an innocent mistake discovered only after reviewing contemporaneous medical records and the NYCHRA Security Incident Report, both of which confirm the accident occurred on July 18, 2024. Respondent's employees responded within one-minute, summoned EMS, and documented the incident, affording respondent actual knowledge of the correct facts. Such contemporaneous knowledge defeats any claim of prejudice (see Gonzalez v New York City Housing Authority, 107 AD3d 471 [1st Dept 2013]) [plaintiffs should have been allowed to correct the notice of claim pursuant to General Municipal Law § 50-e (6), as the mistake was not made in bad faith and NYCHA was not prejudiced by the inaccurate notice].

Here, the proposed amendment does not alter the manner, location, or nature of the claim, but merely corrects the date by one day. Therefore, it is purely technical, altering only the date and not the location, nature, or manner of the claim. Such amendments do not alter the theory of liability and do not prejudice a municipality's ability to investigate (see Hernandez v City of N.Y., 239 AD3d 614 [2d Dept 2025]) [the mere passage of

time, without more, was insufficient to constitute substantial prejudice to the defendants].

Respondent had actual notice of the correct date within minutes of the occurrence and documented it in its own accident report. Therefore, the court finds the error was made in good faith and that respondent will suffer no prejudice if the amendment is allowed.

Accordingly, it is hereby

ORDERED that motion (sequence no. 001) pursuant to General Municipal Law (GML) § 50-e (6), for leave to amend the notice of claim to correct the date of the alleged accident from July 19, 2024, to July 18, 2024 is granted; it is further

ORDERED that the amended notice of claim is timely filed nunc pro tun; and it is further

ORDERED that the Clerk shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/7/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	