

Adams v City of New York

2025 NY Slip Op 33620(U)

September 24, 2025

Supreme Court, New York County

Docket Number: Index No. 154362/2024

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

-----X

JOLENE MICHELLE ADAMS,

Plaintiff,

- v -

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

Defendants.

INDEX NO. 154362/2024

MOTION DATE 08/22/2025,
09/08/2025

MOTION SEQ. NO. 002 004

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 29, 30, 31, 32, 48, 76-80

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 62-75, 81-82

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, it is **ORDERED** that plaintiff’s motion to renew and reargue her prior application for leave to serve a late notice of claim upon defendant New York City Transit Authority and non-party Manhattan and Bronx Surface Transit Operating Authority (Seq. No. 004) is **DENIED**; and it is further

ORDERED that defendant New York City Transit Authority’s motion to dismiss (Seq. No. 002) is **GRANTED**, the complaint is severed and dismissed as against it, with costs and disbursements to this defendant as taxed by the Clerk upon submission of an appropriate bill of costs, and all cross-claims against this defendant are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in defendant New York City Transit Authority’s favor accordingly; and it is further

ORDERED that this action is respectfully referred to the General Clerk for reassignment to a City Part.

By a decision and order dated and entered June 3, 2025, this court denied plaintiff’s motion for leave to serve late notices of claim upon defendant New York City Transit Authority (NYCTA) and non-party Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) and other non-parties (see plaintiff’s Exhibit 1 in support of mot [NYSCEF Doc. No. 64]).

The NYCTA now moves to dismiss the complaint as against it, on the ground that it was not served with a timely notice of claim (Seq. No. 002). Plaintiff opposes the motion and separately moves for leave to renew and reargue the prior decision (Seq. No. 004). The NYCTA opposes plaintiff's motion.

I. Plaintiff's motion to renew and reargue (Seq. No. 004)

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision. Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. A motion to renew under CPLR 2221, on the other hand, is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal quotation marks and citations omitted]).

The branch of plaintiff's motion to reargue the court's prior decision and order is denied. Contrary to plaintiff's argument, the court did not overlook or misapprehend any facts or law. This court expressly rejected plaintiff's argument that the "claim letter" dated February 14, 2024 constituted actual knowledge of the essential facts constituting the claim. The prior decision states, in relevant part:

"As the NYCTA pointed out, the letter dated February 14, 2024 failed to provide the essential facts constituting the claim against the NYCTA. The letter recites the injured person (i.e., plaintiff), and the date, time, and location of the incident, **but the letter does not state that what happened to plaintiff, the injuries allegedly suffered, or the acts or omissions for the basis of the NYCTA's liability**" (see plaintiff's Exhibit 1 in support of mot [emphasis added]).

Although plaintiff's counsel insists that the claim letter sets forth the essential facts constituting the claim, plaintiff's counsel could not point to any part of the letter that stated what happened to plaintiff, or the injuries allegedly suffered. Neither did plaintiff's counsel cite any part of the letter which set forth the acts or omissions for the basis of the NYCTA's liability. "[K]nowledge of the facts underlying an occurrence does not constitute knowledge of the claim. What satisfies the statute is not knowledge of the wrong. What the statute exacts is notice of [the] 'claim'" (*Chattergoon v New York City Hous. Auth.*, 161 AD2d 141 [1st Dept 1990]; see also *Bullard v City of New York*, 118 AD2d 447 [1st Dept 1986]).

Plaintiff's argument that the court improperly placed the burden on plaintiff to demonstrate that the NYCTA was not prejudice is meritless. *Matter of Newcomb v*

Middle Country Central School District (28 NY3d 455, 466 [2016]), which was cited in the prior decision, clearly held:

“the 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” (*id.* at 466 [emphasis added]).

Plaintiff’s argument that the court misread *Cassidy v New York City Transit Authority* (238 AD3d 484 [1st Dept 2025]) is without merit. As stated in the prior decision, *Cassidy* ruled that “an untimely notice of claim on defendants five days after the 90–day statutory time period expired did not establish that defendants had actual knowledge of his claims because ‘[t]his late service, without leave of court, was a nullity’” (*id.*).

To the extent that plaintiff argues that *Cassidy* is contrary to appellate decisions in the Appellate Division, Second Department, the prior decision also stated, “In *Feduniak v New York City Health & Hosps. Corp. (Queens Hosp. Ctr.)*, the Appellate Division, Second Department stated, “this Court has ruled that actual knowledge of the essential facts constituting the claim cannot be inferred from a late notice of claim served without leave of the court’ (170 AD3d at 665).”

This court notes that the Appellate Division, First Department has recently cited *Cassidy* with approval in *Matter of Brady v New York City Housing Authority* (2025 NY Slip Op 05035 [1st Dept, Sep 23 2025]). There, the Appellate Division ruled that “Supreme Court providently exercised its discretion in denying petitioner’s motion for leave to serve a late notice of claim approximately 22 days after the 90-day limitations period expired” (*id.*).

Lastly, the court did not overlook plaintiff’s affidavit or misapply the standard for reasonable excuse. The court did not address whether plaintiff had a reasonable excuse because the court had ruled that plaintiff failed to establish that the NYCTA and MABSTOA had timely acquired actual knowledge of the essential facts constituting the claim, and that plaintiff had not demonstrated the lack of substantial prejudice if leave were granted (*see Charalabidis v Elnagar*, 188 AD3d 44, 49 [2d Dept 2020] [“Courts may dispose of one or more branches of lesser importance as being without merit or rendered academic by other aspects of the order”]).

The branch of plaintiff’s motion to renew is denied.

With respect to renewal, plaintiff submits another affidavit (*see* plaintiff’s Exhibit 3 in support of mot [NYSCEF Doc. No. 66]). Plaintiff’s counsel now also claims that, on May 7, 2024, he received a phone call from NYCTA Investigator Felix Williams, who purportedly acknowledged and confirmed that an incident occurred at a location under NYCTA’s control (*see* affirmation of plaintiff’s counsel ¶ 62 [NYSCEF Doc. No. 63]).

Plaintiff now submits an incident report that was purportedly submitted to plaintiff's employer, Greyhound (see *id.* ¶ 64; see also plaintiff's Exhibit 2 in support of mot [NYSCEF Doc. No. 65]). Lastly, plaintiff's counsel submits a FOIL request made to the New York City Department of Transportation (see plaintiff's Exhibit 6 in support of mot [NYSCEF Doc. No. 69]).

However, plaintiff does not adequately explain why those facts were not offered on the prior motion. The call with the investigator purportedly took place on May 7, 2024, nine days before plaintiff's counsel had filed the initial motion for leave to serve a late notice of claim on May 16, 2024. The FOIL request was purportedly submitted on March 12, 2024 (affirmation of plaintiff's counsel ¶ 62), well before the prior motion for leave was made. Plaintiff's counsel does not state when the incident report was obtained. "Renewal is granted sparingly and should not be used as a second chance freely given to parties who have failed to exercise due diligence in making their first factual presentation" (*Perretta v New York City Tr. Auth.*, 230 AD3d 428, 432 [1st Dept 2024] [citations omitted]).

In any event, such facts would not have changed the prior determination. The call with Investigator Williams does not establish that the NYCTA had timely acquired knowledge of the essential facts constituting plaintiff's claim within 90 days after the incident, or within a reasonable time thereafter. At best, the call would prove that the NYCTA had knowledge as of the date of the call, i.e., May 7, 2024, 96 days after expiration of the 90-day period to serve a timely notice of claim. It would be speculative to conclude that the NYCTA had actual knowledge of the essential facts of plaintiff's claim at an earlier time that was within 90 days after the incident, or a reasonable time thereafter. As the NYCTA points out, the FOIL request was served upon the City of New York's Department of Transportation, which is not part of the NYCTA or MABSTOA.

Plaintiff's argument that the incident report, along with a photo taken and sent to plaintiff's supervisor, "taken within minutes of the incident, support a strong inference that NYCTA personnel, who manage and operate the building were aware or should have been aware of the occurrence" (affirmation of plaintiff's counsel ¶ 64). However, this argument is unavailing. In *Matter of Jaime v City of New York* (41 NY3d 531, 540 [2024]), the Court of Appeals held, "the party seeking leave has the burden of establishing [timely actual knowledge] through the submission of nonspeculative evidence" (*id.* at 540). Plaintiff's argument is based on speculation.

The court has considered plaintiff's remaining arguments and finds them unavailing.

II. NYCTA's motion to dismiss (Seq. No. 002)

Where an action against the NYCTA is founded on a tort (except for wrongful death), Public Authorities Law § 1212 (2) requires service of a notice of claim upon the NYCTA prior to the commencement of the action, "within the time limited by and in

compliance with all of the requirements of section [50-e] of the general municipal law.”
“Failure to comply with a statutory notice of claim requirement is a ground for dismissal pursuant to CPLR 3211(a) (7) for failure to state a cause of action” (*Singh v City of New York*, 189 AD3d 1697, 1699 [2d Dept 2020], *affd* 40 NY3d 138 [2023]).

Here, it is undisputed that plaintiff did not serve a timely notice of claim upon the NYCTA.

Therefore, the NYCTA’s motion to dismiss is granted, and the complaint is severed and dismissed as against it.

Because the NYCTA can no longer be held liable to plaintiff, any cross-claims of co-defendant City of New York that sound in common-law indemnification and contribution are dismissed by operation of law (*see e.g. Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross-claims against that defendant are also dismissed]).

Because the only remaining defendant in this personal injury action is the City of New York, who is represented by Corporation Counsel, this action is referred to the General Clerk for reassignment to a City Part.



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<u>9/24/2025</u>				<u>RICHARD TSAI, J.S.C.</u>	
	DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
SEQ NO. 002	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
SEQ NO. 004	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	