SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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THE GETAWAY 151, LLC,

Petitioner,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY and MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY,

RespondentS.

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INDEX NO. 157934/2025

MOTION DATE 09/09/2025

MOTION SEQ. NO. 001

DECISION + JUDGMENT ON PETITION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-22 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 **DENIED**, and the proceeding is dismissed.

Petitioner seeks leave to serve late notices of claim upon respondents, seeking to recover for property damage. According to petitioner, from at least March 25, 2024 through October 10, 2024, M11 buses damaged the sidewalk abutting petitioner's premises, by backing upon onto the sidewalk as a turnabout for buses (verified amended petition at 2 ¶¶ 3-4 [NYSCEF Doc. No. 6]).[1] The sidewalk is the roof of the premises directly below, and the damage to the sidewalk allegedly resulted in water damage to petitioner's premises (*id.* ¶ 10).

Petitioner allegedly served a notice of claim upon the New York City Transit Authority (NYCTA) on or about March 25, 2024 (verified amended petition ¶ 11), but petitioner now believes that perhaps respondents Metropolitan Transportation Authority (MTA) and/or the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) are potential correct parties to the notice of claim (*id.* ¶ 22). Respondents oppose the petition.

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

As a threshold matter, respondents' argument that the petition should be denied because the statute of limitations had expired is without merit. In this case, the

[1] The amended verified petition is initially numbered consecutively from paragraphs 1 through 6, but on page 2, the numbering restarts at paragraph 1 after paragraph 6.

applicable statute of limitations for actions against the MTA and MABSTOA for property damage is one year and 90 days (*see* Public Authorities Law § 1276 [2]; *see* Public Authorities Law §§ 1212 [2] and 1203-6 [a]). The petition alleges damage that occurred during the period from "at least March 25, 2024 through October 10, 2024" (amended verified petition ¶ 3). Thus, as to any damage that allegedly occurred on March 25, 2024, the statute of limitations would have run on June 23, 2025.

Here, the petition for leave to serve late notices of claim was filed on June 20, 2025 (*see* NYSCE Doc. No. 1), before the statute of limitations had run. The statute of limitations was then tolled "from the time the plaintiff commenced the proceeding to obtain leave of the court to file a late notice of claim until . . . the date upon which [the order] was to take effect" (*Barchet v New York City Tr. Auth.*, 20 NY2d 1, 6 [1967]).

Turning to the merits,

> "[i]n 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 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

Petitioner did not demonstrate a reasonable excuse for not serving a timely notice of claim upon respondents. The fact that petitioner did not know that the MTA or MABSTOA could be owners of the buses does not constitute a reasonable excuse (*see*

Quinn v Manhattan and Bronx Surface Tr. Operating Auth., 273 AD2d 144, 144 [1st Dept 2000] ["an error in ascertaining the correct party to sue, was not, however, one that would support a grant of permission to file a late notice of claim"]). Although petitioner claims that the NYCTA did not advise petitioner of other potential respondents, the NYCTA was under no obligation to inform petitioner that others are proper parties (*see Cane v City of New York*, 209 AD2d 217, 217 [1st Dept 1994] ["MABSTOA was under no obligation to aid plaintiffs in prosecuting their claims"]).

Actual knowledge of the essential facts

"The actual knowledge requirement contemplates actual knowledge of the essential facts constituting the claim, not knowledge of a specific legal theory" (*Matter of Townson v New York City Health & Hosps. Corp.*, 158 AD3d 401, 403 [1st Dept 2018]; *Matter of Grande v City of New York*, 48 AD3d 565 [2nd Dept 2008]). However, "knowledge 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]). "The statute contemplates not only knowledge of the facts, but also how they relate to the legal claim to be asserted" (*Carpenter v City of New York*, 30 AD3d 594, 595 [2d Dept 2006]).

Here, petitioner submits no evidence that respondents had timely, actual knowledge of the essential facts constituting the claim. The NYCTA and MABSTOA are distinct and separate entities (*Rosas v Manhattan and Bronx Surface Tr. Operating Auth.*, 109 AD2d 647 [1st Dept 1985]). Thus, service of a notice of claim upon the NYCTA does not constitute service of a notice of claim upon MABSTOA or the MTA (*Reis v Manhattan and Bronx Surface Tr. Operating Auth*., 161 AD2d 288 [1st Dept 1990]).

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).

Once this initial showing has been made, the public corporation must respond with a particularized evidentiary showing that the corporation will be substantially prejudiced if the late notice is allowed" (*Matter of Newcomb*, 28 NY3d at 467). "Substantial prejudice may not be inferred solely from the delay in serving a notice of claim" (*id.* at 468 n 7).

In this case, petitioner arguably met the initial burden of demonstrating lack of substantial prejudice. The damage to the sidewalk is a premises condition that arguably has not changed since the period in question, such that an investigation would still be

possible despite the late notice (*Fredrickson v New York City Hous. Auth*., 87 AD3d 425, 425 [1st Dept 2011]).

However, because petitioner did not demonstrate that respondents had timely, actual knowledge of the essential facts constituting petitioner's claims, and because petitioner had no reasonable excuse, the petition is denied.

Although not raised by the parties, the court notes that, in *Matter of Richardson v New York City Housing Authority* (136 AD3d 484, 484 [1st Dept 2016]), the Appellate Division, First Department reversed the court below and granted leave to serve a late notice of claim solely because the respondent was not substantially prejudiced, even though the respondent did not have timely, actual knowledge of the essential facts of the claim and the petitioner lacked a reasonable excuse.

However, in light of *Matter of Jaime v City of New York*, which reiterates that courts must place "great weight" on whether respondents had timey acquired actual knowledge of the essential facts, the continued validity of *Richardson* is questionable, as the lack of substantial prejudice in *Richardson* was accorded more weight than the respondents' lack of actual knowledge of the essential facts of the petitioner's claim.

With respect to the MTA, the petition is denied on the additional ground that the proposed claim against the MTA is patently meritless.

"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]). As respondents point out, "[i]t 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]).

In light of the court's determination, respondents' remaining alternative arguments are academic (*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"]).

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RICHARD TSAI, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**