

Simmons v City of New York

2025 NY Slip Op 34901(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 163040/2025

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M

Justice

-----X

BRANDON SIMMONS

Petitioner,

- v -

CITY OF NEW YORK,

Respondent.

-----X

INDEX NO. 163040/2025

MOTION DATE 10/01/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 13 were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, Petitioner Brandon Simmons’ (“Petitioner”) petition for leave to serve a late notice of claim pursuant to General Municipal Law § 50-e is granted without opposition.

Pursuant to General Municipal Law § 50-i, no action sounding in tort may be commenced against the City unless a notice of claim was served upon it within ninety (90) days after the subject claim arose (General Municipal Law §§ 50-i [a], 50[e]). “The purpose of the notice of claim is to alert the municipality to the existence of the claim so that it can promptly investigate and preserve any relevant evidence before the passage of time renders such evidence unavailable or lessens its probative value” (*Jaime v City of New York*, 41 NY3d 531, 539 [2024]). As such, the notice of claim must state “the time when, the place where and the manner in which the claim arose” (General Municipal Law § 50-e[2]). The notice of claim “was not meant to be used as a sword to cut down honest claims, but merely as a shield to protect municipalities against spurious ones” (*Goodwin v New York City Hous. Auth.*, 42 AD3d 63, 66 [1st Dept 2007]). Because of its remedial nature, the statute must be liberally construed (*see Camacho v City of New York*, 187 AD2d 262

[1st Dept 1992]) and “should not operate as a device to frustrate the rights of individuals with legitimate claims” (*Matter of Porcaro v City of New York*, 20 AD3d 357 [1st Dept 2005]).

Courts, in their discretion, may extend the time to serve a late notice (General Municipal Law § 50-e[5]). “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 [ninety days of the claim’s accrual] or within a reasonable time thereafter” (*Jaime*, 41 NY3d at 540). “Courts are to place ‘great weight’ on this factor [and] the party seeking leave has the burden of establishing [actual knowledge] through the submission of nonspeculative evidence” (*id.*). “Generally, knowledge of essential facts as to time and place by an actor in a position to investigate will suffice” (*id.*). Other factors to be considered include the reasonableness of the excuse offered for the delay in filing and whether the municipality would be substantially prejudiced because the claimant did not file during the statutory period (*Corwin v City of New York*, 141 AD3d 484, 489 [1st Dept 2016]).

In this instance, Petitioner met his burden by demonstrating that Respondent the City of New York (the “City”) acquired the essential facts underlying Petitioner’s claims within the statutory period and will therefore not be prejudiced by the late service. Petitioner is the son of Ana Morel, who was struck and killed by a drunk driver who traveled through the intersection of Water Street and Jackson Avenue, over a curb, and through a fence into Corlears Hook Park on July 4, 2024 (NYSCEF Doc No. 2, Zullo aff’ ¶ 5; NYSCEF Doc No. 4, Simmons aff’ ¶ 3). Ms. Morel was one of eleven individuals who were injured as a result of this accident (NYSCEF Doc No. 2, Zullo aff’ ¶ 5). Petitioner contends that several of the other individuals affected by this tragic event have brought lawsuits against the City alleging that it had a duty to maintain the area where the accident occurred (*id.* ¶¶ 6-8). Petitioner argues that in addition to this timely notice,

that the City will not be prejudiced by his late notice of claim because records that are relevant to the area and the accident are within the City's custody and control (*id.* ¶ 23).

On balance, the court finds that these facts and circumstances, including the gravity of the allegations, weigh heavily in favor of allowing this case to proceed on its merits. Not only does Petitioner contend that the City is currently litigating other lawsuits about the same accident and location, but there has been substantial media coverage, as well as prosecution of the drunk driver's criminal matter such that the City has not been deprived of a meaningful opportunity to investigate, preserve relevant evidence, and defend itself should Petitioner commence an action.

Significantly, the petition is unopposed, and the City has therefore not advanced any arguments to the contrary (*Goodwin*, 42 AD3d at 68 ["prejudice will not be presumed" and "may not be shown without evidence of an attempt to investigate"]). Thus, in the absence of prejudice and where the City has timely acquired the essential facts underpinning Petitioner's claims, the motion is granted (*see Jordan v City of New York*, 41 AD3d 658, 660 [2d Dept 2007] ["Since the City acquired timely knowledge of the essential facts of the claim, the plaintiff met his initial burden of showing a lack of prejudice"]).

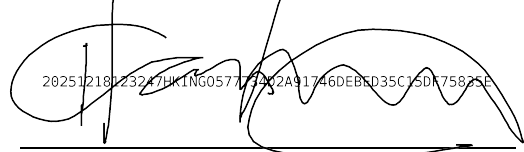
Therefore, it is hereby

ORDERED and ADJUDGED that Petitioner's request for leave to serve a late notice of claim is granted; and it is further

ORDERED and ADJUDGED that the notice of claim in the form annexed to the moving papers as Exhibit D (NYSCEF Doc No. 7) is deemed timely served *nunc pro tunc* upon the City of New York as of the date of entry of this order, provided that Petitioner shall within twenty (20) days serve the notice of claim in accordance with General Municipal Law § 50-e(3); and it is further

ORDERED and ADJUDGED that Petitioner shall commence an action and purchase a new index number in the event a lawsuit arising from this notice of claim is filed.

This constitutes the decision, order, and judgment of the court.



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HASA A. KINGO, J.S.C.

12/18/2025

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE