

Mangual v City of New York

2025 NY Slip Op 34964(U)

December 17, 2025

Supreme Court, New York County

Docket Number: Index No. 164872/2025

Judge: Hasa A. Kingo

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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NILSA MANGUAL

Petitioner,

- v -

THE CITY OF NEW YORK,

Respondent.

-----X

INDEX NO. 164872/2025

MOTION DATE 12/12/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11 were read on this motion for LEAVE TO FILE.

By verified petition and supporting papers, Petitioner Nilsa Manguel (“Petitioner”) moves, unopposed, for an order pursuant to General Municipal Law (“GML”) § 50-e (5) granting leave to serve a late notice of claim upon Respondent City of New York (the “City”) in the form annexed to the petition, or, in the alternative, deeming the notice of claim already served timely *nunc pro tunc*, together with such other and further relief as the court deems just and proper.

BACKGROUND AND PROCEDURAL HISTORY

Petitioner alleges that on November 8, 2024, she sustained personal injuries when, while walking on the sidewalk at the northeast corner of West 4th Street and 6th Avenue in Manhattan, she tripped and fell due to a dangerous, defective, and trap-like condition. Petitioner alleges that she sustained serious injuries, including fractures to her left wrist and facial injury, among other *sequelae*.

A notice of claim was served upon the City on February 7, 2025, which Petitioner represents was one day after the 90-day period prescribed by GML § 50-e (1). The City acknowledged receipt on February 14, 2025, and on that date also disallowed the claim as untimely.

Petitioner commenced this special proceeding seeking leave to file a late notice of claim, or to deem the already-served notice timely *nunc pro tunc*. The petition is supported by an affidavit of merit and the proposed/served notice of claim referenced in the moving papers.

DISCUSSION

GML § 50-e reflects two complementary aims: to protect municipalities from stale or unfounded claims, while ensuring that meritorious claims are not forfeited through “ministerial” missteps (*Goodwin v New York City Hous. Auth.*, 42 AD3d 63, 66 [1st Dept 2007]). In service of

those remedial purposes, the statute is to be liberally construed, and courts are vested with “broad discretion” to grant leave where the statutory factors favor the application (*Matter of Thomas v City of New York*, 118 AD3d 537, 538 [1st Dept 2014]; *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 466 [2016]).

In determining whether to grant leave, the court must consider the factors enumerated in GML § 50-e (5), “in particular” whether the municipality acquired actual knowledge of the essential facts constituting the claim within the statutory period or “within a reasonable time thereafter,” and whether the delay will cause substantial prejudice to the municipality’s ability to investigate and defend the claim (GML § 50-e [5]; *Matter of Dominguez v City Univ. of N.Y.*, 166 AD3d 540, 541 [1st Dept 2018]; *Williams v Nassau County Med. Ctr.*, 6 NY3d 531, 538 [2006]).

No single factor is dispositive; rather, the court considers the totality of the circumstances (*Matter of Gelish v Dix Hills Water Dist.*, 58 AD3d 841, 842 [2d Dept 2009]; *Matter of Leeds v Port Wash. Union Free Sch. Dist.*, 55 AD3d 734 [2d Dept 2008]; *Jordan v City of New York*, 41 AD3d 658, 659 [2d Dept 2007]).

The absence of a compelling excuse is not fatal, particularly where the municipality had timely (or nearly timely) actual knowledge and cannot demonstrate substantial prejudice (*Justiniano v New York City Hous. Auth. Police*, 191 AD2d 252 [1st Dept 1993]; *Matter of Reisse v County of Nassau*, 141 AD2d 649 [2d Dept 1988]; *Matter of Brownstein v County of Nassau*, 52 AD3d 507, 510 [2d Dept 2008]).

I. Actual Knowledge of the Essential Facts Within a Reasonable Time Thereafter

Here, the record supports a finding that the City acquired actual knowledge of the essential facts constituting Petitioner’s claim within a reasonable time thereafter, because the notice of claim was served one day after the expiration of the 90-day period.

The Appellate Division, First Department, has expressly recognized that where a municipality obtains actual knowledge one day after the statutory period expires, it has “ample opportunity to conduct a thorough investigation,” which strongly supports granting leave (*Matter of Dominguez*, 166 AD3d at 541).

Similarly, a short delay beyond the statutory period is generally unlikely to impair the municipality’s ability to investigate, as witnesses’ memories and physical conditions are not typically affected by such a brief passage of time (*Matter of Thomas*, 118 AD3d at 537).

In view of these authorities—and particularly given the minimal one-day lapse—this factor weighs heavily in Petitioner’s favor.

II. Substantial Prejudice

The “gravamen” of the inquiry under GML § 50-e (5) is whether the municipality is substantially prejudiced by the delay, particularly where it did not obtain actual knowledge within

the statutory period or within a reasonable time thereafter (*Williams*, 6 NY3d at 538; *Matter of Dominguez*, 166 AD3d at 541).

On this record, the court finds that the City will not be substantially prejudiced. The notice of claim was served essentially contemporaneously with the statutory deadline (one day thereafter), and the City therefore retained a meaningful and timely opportunity to investigate, identify witnesses, preserve evidence, and conduct a hearing pursuant to GML § 50-h.

Courts routinely find minimal delay insufficient to establish substantial prejudice (*see, e.g., Matter of Cox v City of Peekskill*, 297 AD2d 735, 736 [2d Dept 2002]; *Matter of Isakov v City of New York*, 221 AD2d 531 [2d Dept 1995]).

Moreover, under *Newcomb*, a petitioner must make an initial showing of lack of substantial prejudice, after which the public corporation must rebut that showing with particularized evidence; conclusory assertions do not suffice (*Matter of Newcomb*, 28 NY3d at 466).

As the motion is unopposed, there is no evidentiary submission from the City identifying any concrete investigative impairment attributable to a one-day delay. On this record, the court finds that the City has not—and cannot—demonstrated substantial prejudice.

III. Reasonable Excuse

Petitioner's submissions do not rest the application primarily upon a detailed "excuse" for the one-day delay. But that is not dispositive. The Appellate Division, First Department, has held that the absence of an acceptable excuse is not fatal where the municipality has actual notice and cannot show prejudice (*Justiniano*, 191 AD2d 252; *see also Matter of Brownstein*, 52 AD3d at 510).

Given the extreme brevity of the delay, the City's actual knowledge within a reasonable time, and the absence of substantial prejudice, the lack of a more robust excuse does not warrant denial.

IV. Timeliness of the Application

Finally, the petition was filed within the statute's outer temporal constraint applicable to actions against municipalities (commonly described as one year and ninety days from accrual for tort claims against the City), and therefore the court has the statutory authority to grant the requested relief.

Considering all relevant circumstances—most notably the City's acquisition of actual knowledge one day after the statutory period, the absence of any substantial prejudice, the remedial purposes of GML § 50-e, and the broad discretion vested in this court—the application is granted (*see Goodwin*, 42 AD3d at 66; *Matter of Thomas*, 118 AD3d at 538; *Matter of Newcomb*, 28 NY3d at 466).

Accordingly, it is hereby:

ORDERED and ADJUDGED that the petition is granted; and it is further

ORDERED and ADJUDGED that Petitioner is granted leave pursuant to General Municipal Law § 50-e (5) to serve a late notice of claim upon Respondent City of New York; and it is further

ORDERED and ADJUDGED that the notice of claim annexed to the petition (and/or the notice of claim previously served) is deemed timely served *nunc pro tunc*; and it is further

ORDERED that within 20 days of entry of this decision, order, and judgment, Petitioner shall serve a copy of this decision, order, and judgment with notice of entry upon Respondent in accordance with CPLR § 2103, and shall file proof of such service with the New York County Clerk; and it is further

ORDERED that Respondent shall have the rights afforded by General Municipal Law, including but not limited to the right to demand a hearing pursuant to General Municipal Law § 50-h and to seek appropriate authorizations, as provided by law.

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

HASA A. KINGO, J.S.C.

12/17/2025
DATE

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