

**Espinal v Tavaréz**

2026 NY Slip Op 30174(U)

January 13, 2026

Supreme Court, New York County

Docket Number: Index No. 154246/2024

Judge: Ariel D. Chesler

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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. ARIEL D. CHESLER PART 62M

Justice

-----X

INDEX NO. 154246/2024

MAIRIM ESPINAL,

MOTION DATE 06/12/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ISSAC TAVAREZ, NEW YORK CITY POLICE DEPARTMENT

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE

Upon the foregoing documents, it is

In this proceeding, plaintiff moves, unopposed, for an Order pursuant to General Municipal Law 50-e(6) holding the (1) Notice of Claim timely served upon the New York City Police Department ("NYPD") and City of New York (the "City") which only names the NYPD as Defendant in the caption, (2) in the alternative amending the Notice of Claim and (3) pursuant to CPLR 3025(b) and (c) granting leave to file and serve a Supplemental Summons and Amended Complaint.

This action arises out of personal injuries allegedly sustained involving plaintiff and an NYPD vehicle on December 19, 2023. Plaintiff commenced this action by filing a Summons and Complaint on March 1, 2024. Issue was joined and Bills of Particulars were served.

Plaintiff now seeks to have the original Notice of Claim deemed nunc pro tunc as to service on the City and in the alternative to amend the Notice of Claim to substitute the City as defendant in place of the NYPD. Plaintiff argues that the City Comptroller acknowledged receipt

of the Notice of Claim within 90 days of the accident and the body of the Notice of Claim was sufficient to give the City timely notice given that the named defendant Issac Tavarez was operating the subject NYPD vehicle with the NYPD's permission. Additionally, plaintiff claims that the correspondence received from the City in attempts to schedule the plaintiff's 50-h hearing shows the City had notice that they are the intended defendant in this action. Plaintiff also asserts that there is no prejudice from any amendment to the Notice of Claim.

Under CPLR 3025, a party may amend a pleading "at any time by leave of court," and "[l]eave shall be freely given upon such terms as may be just." General Municipal Law 50-e(6) states,

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.

"A court has discretion to grant leave to serve an amended notice of claim where the error in the original notice was made in good faith and where the other party has not been prejudiced thereby" (*Davis v. City of New York*, 210 A.D.3d at 866 [2<sup>nd</sup> Dept. 2022]). However, "[a] notice of claim may [not] be amended ... to substantively change the nature of the claim or the theory of liability" (*Macareno v. New York City Tr. Auth.*, 206 A.D.3d 642 at 643 [2<sup>nd</sup> Dept. 2022] [internal quotation marks omitted]).

Here, plaintiff has demonstrated that the proposed amendment is technical in nature and does not include a substantive change to the facts, it does not add a new theory of liability, and no party opposed the motion demonstrating any prejudice. The Court finds Amending the Notice of Claim and serving it on the City more appropriate than deeming that the original Notice of

Claim gave the City notice as the intended defendant. Thus, the motion to amend the Notice of Claim to substitute the City as defendant in place of the NYPD should be granted.

Plaintiff also seeks leave to amend the Complaint to substitute the City as defendant in place of the NYPD and to supplement the allegations already contained in the timely served Notice of Claim.

Under CPLR 3025(b), a party may amend a pleading “at any time by leave of court,” and “[l]eave shall be freely given upon such terms as may be just.” “[O]n a motion for leave to amend a pleading, movant need not establish the merit of the proposed new allegations, but must simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*Cruz v. Brown*, 129 AD3d 455, 456 [1<sup>st</sup> Dept 2015] [internal citations omitted] ). “Absent prejudice, courts are free to permit amendment even after trial” (*Kimso Apartments, LLC v. Gandhi*, 24 NY2d 403, 411 [2014]). “The burden of establishing prejudice is on the party opposing the amendment (*id.*).

Here, plaintiff has demonstrated that the proposed amendment is not palpably insufficient or clearly devoid of merit, and no party opposed the motion demonstrating any prejudice. Thus, the motion to Amend the Summons and Complaint should be granted.

Accordingly, it is hereby

**ORDERED**, that plaintiff’s motion for leave to amend the Notice of Claim and permit service on counsel is granted; and it is further

**ORDERED**, that plaintiff’s motion for leave to amend the Complaint and permit service of the Supplemental Summons and Amended Complaint on counsel on behalf of defendants City of New York and Issac Tavaréz is granted; and it is further

ORDERED, that any other relief requested herein is denied.

HON. ARIEL D. CHESLER  
J.S.C.



ARIEL D. CHESLER, J.S.C.

1/13/2026

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE