

<b>Ryan v City of New York</b>
2026 NY Slip Op 30237(U)
January 22, 2026
Supreme Court, New York County
Docket Number: Index No. 153015/2022
Judge: Carol Sharpe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL SHARPE PART 52M

Justice

INDEX NO. 153015/2022

LIAM RYAN, as Administrator of the Estate of KEVIN T. RYAN, deceased

MOTION DATE 02/12/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for DISMISS

The City of New York ("The City") filed a motion seeking to dismiss plaintiff's causes of action for negligence and conscious pain and suffering because the notice of claim was untimely; granting The City leave to file a proposed amended answer including the affirmative defense that the complaint is time-barred; and dismissing any claim of negligence and conscious pain and suffering, pursuant to General Municipal Law ("GML") §50-e, CPLR §217-a, and CPLR 3211(a)(7), as the complaint is time-barred for such theories of recovery. Plaintiff cross-moved to have the notice of claim and complaint deemed timely filed nunc pro tunc with respect to negligence and damages for conscious pain and suffering. The City's motion is granted, and plaintiff's cross-motion is denied.

On January 7, 2022, plaintiff Liam Ryan, father of the late Kevin Ryan and Administrator of his estate, served a notice of claim on The City and commenced the action by filing a summons and complaint on April 7, 2022. The City joined issue by filing its answer on June 9, 2022. Plaintiff alleges that on the morning of November 16, 2020, two New York City Police Department ("NYPD") officers wrongfully and negligently caused the death of Kevin Ryan, who died of a drug overdose on a sidewalk in Jamaica, Queens County, New York, by failing to properly assist him pursuant to NYPD

protocols, and failing to allow a licensed paramedic from the AIDS Center of Queens County (“ACQC”) who witnessed the incident to assist. Plaintiff seeks damages for wrongful death, negligence, conscious pain and suffering, lost wages, funeral and burial costs, the support Kevin Ryan would have given to his parents, and all legal fees.

The City seeks dismissal of the claims for negligence, conscious pain and suffering, and for non-pecuniary damages on the grounds that both the notice of claim and the complaint were untimely as to those causes of action, and that plaintiff is time-barred from seeking to have the complaint deemed timely filed. The City contends that plaintiff should have filed a notice of claim for the personal injury claims within ninety (90) days from the date of Kevin Ryan’s death, not ninety (90) days from plaintiff’s appointment as Administrator. The City also seeks leave to file an amended answer and contends that there is no prejudice to plaintiff as the matter is still in its infancy and discovery has not been exchanged pursuant to the Case Scheduling Order (“CSO”). In support of its motion, The City filed a proposed amended answer (NYSCEF Doc. #13), among other things, adding the affirmative defense of the personal injury actions being time-barred.

Plaintiff opposes the motion on the grounds that the notice requirements of GML § 50-e are to alert defendants of the claim, not to limit or frustrate the rights of people with legitimate claims, and thus an application to deem a notice of claim timely filed *nunc pro tunc* should not be denied simply because it was made after the time limit to commence the action; that The City had constructive notice of the incident because of the NYPD’s records, the investigative report into the incident, and the meeting between ACQC, the 103<sup>rd</sup> Precinct, and others, mentioned in an e-mail from Erica Vasquez, Harm Reduction Manager at ACQC to plaintiff (NYSCEF Doc. #28, pg. 3); that The City’s motion causes plaintiff undue surprise as it was filed almost three (3) years after filing its Answer and plaintiff’s 50-h hearing, and after issuance of the CSO dated December 4, 2024; and that The City offers no reason for the lengthy delay in filing its motion. At oral arguments held on the

motion, plaintiff conceded that the statute of limitations had run on the personal injury actions but further argued that The City filed its answer with no mention of the late notice of claim or the running of the statute of limitations and therefore waived its right to oppose.

In support of its cross-motion, plaintiff filed, among other things, affidavits of several witnesses, including the witness who called 911, and the ACQC worker who attempted to help Kevin Ryan; the police report regarding the incident; the NYPD investigative report of the complaint filed regarding the incident; and an e-mail to plaintiff from Ms. Vasquez dated January 22, 2025, regarding actions taken to meet with NYPD officers from the local precinct following Kevin Ryan's death. The City filed a reply.

CPLR 3211(a)(7) allows for a motion to be dismissed by the Court for failure to state a cause of action. Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff "the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972, 638 NE2d 511 [1994]). "...[T]he question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one..." (*Chanko v Am. Broad. Cos. Inc.*, 27 NY3d 46, 52, 29 NYS3d 879, 49 NE3d 1171 [2016]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635, 389 NYS2d 314, 357 NE2d 970 [1976]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus..." (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19, 832 NE2d 26, 31, 799 NYS2d 170, 175 [2005]) and "a motion to dismiss pursuant to CPLR 3211 (a) (7) must be denied "unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it" (*Guggenheimer v Ginzburg*, 43 NY2d at 275)" (*Sokol v Leader*, 74 AD3d 1180, 1182, 904 NYS2d 153, 156 [2nd Dept 2010]).

GML § 50-e requires that for tort actions against the City of New York, a notice of claim “...shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises; except that in wrongful death actions, the ninety days shall run from the appointment of a representative of the decedent’s estate.” CPLR § 217-a provides that any personal injury action against the City of New York requires the filing of a notice of claim as a condition precedent to commencing an action and the notice of claim must be served within the time frame specified in GML § 50-e. It further states, in pertinent part, that:

“Except in an action for wrongful death against such an entity, an action for damages or for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law, whichever is longer.” (NY CLS CPLR § 217-a)

“A claimant’s failure to file a timely notice of claim is not necessarily fatal. Courts have broad discretion to extend the 90-day time limitation “in exceptional cases” upon consideration of all relevant factors, provided the statute of limitations of one year and 90 days has not already expired [internal citation omitted]. 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 [90 days of the claim’s accrual] or within a reasonable time thereafter (General Municipal Law § 50-e [5]; *see Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 461, 45 N.Y.S.3d 895, 68 N.E.3d 714 [2016]). Courts are to place “great weight” on this factor [internal citation omitted] 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, 540, 237 NE3d 796, 802-803, 213 NYS3d 730, 736-737 [2024]). “Although a court is authorized to extend the filing of a notice of claim beyond the 90-day period, the time for filing may not be extended beyond the expiration of the applicable statute of limitations (*see*

General Municipal Law § 50-e [5])” (*Heslin v County of Greene*, 14 NY3d 67, 74, 923 NE2d 1111, 1114, 896 NYS2d 723, 726 [2010]).

Wrongful death is noted as an exception to this rule as it is well-established that a wrongful death cause of action is separate and distinct action from a personal injury action (*see Ratka v St. Francis Hosp.*, 44 NY2d 604, 378 NE2d 1027, 407 NYS2d 458 [1978]; *Yoo v New York City Health & Hosps. Corp.*, 239 AD2d 267, 657 NYS2d 189 [1st Dept 1997]). “EPTL 11-3.2 (b), referred to as the “survival statute,” provides that “[n]o cause of action for injury to person or property is lost because of the death of the person in whose favor the cause of action existed. For any injury an action may be brought or continued by the personal representative of the decedent. As a condition precedent to initiating a personal injury action against a municipality, a notice of claim must be served within 90 days after the claim arises (*see* General Municipal Law § 50-e [1] [a]). The action must also be commenced within the statutorily prescribed one-year-and-90-day limitations period (*see* General Municipal Law § 50-i [1])” (*Heslin*, 14 NY3d 67, 73-74). “A personal injury action is for conscious pain and suffering of the decedent prior to his death. This contrasts with a wrongful death action for pecuniary injuries resulting from decedent's death and certain expenses. The recovery for conscious pain and suffering accrues to the decedent's estate [EPTL 11-3.2 (b)], whereas the damages for wrongful death are for the benefit of the decedent's “distributes” who have suffered “pecuniary injury” (*see* EPTL 5-4.1, 5-4.3, 5-4.4, 11-3.3). The claims are thus predicated on essentially different theories of loss which accrue to different parties” (*Ratka*, 44 NY2d 609; *see Heslin*, 14 NY3d at 77). While the statute of limitations for bringing a wrongful death action is two years from the time an administrator is appointed to the decedent's estate (*see* NY CLS EPTL § 5-4.1; NY CLS Pub A § 2981), plaintiff's causes of action for conscious pain and suffering and for non-pecuniary damages are untimely. The cross-motion to have the notice of claim deemed served *nunc pro tunc* was not filed

until March 11, 2025, well beyond the statute of limitations for these causes of action. Consideration of any other arguments proffered by the parties would be purely academic. Accordingly, it is hereby

**ORDERED**, that The City’s motion to dismiss plaintiff’s claims for negligence, conscious pain and suffering and non-pecuniary damages is granted in its entirety; it is further

**ORDERED**, that plaintiff’s cross-motion to have the notice of claim deemed timely filed *nunc pro tunc* with regard to the claims for negligence and damages for conscious pain and suffering is denied in its entirety; it is further

**ORDERED**, that plaintiff’s causes of action for negligence and damages for conscious pain and suffering are dismissed and severed from this action; it is further

**ORDERED**, that The City shall serve this Order with Notice of Entry upon all parties, the Clerk of the Court, and the Clerk of the General Clerk’s Office, within twenty (20) days of the date of this Order and file proof of service within (10) days from effectuating said service; and it is further

**ORDERED**, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter, or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

ENTER:

1/22/2026  
DATE

  
HON. CAROL SHARPE  
HON. CAROL SHARPE  
J.S.C.

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