

Garner v City of New York
2026 NY Slip Op 30347(U)
January 30, 2026
Supreme Court, New York County
Docket Number: Index No. 157291/2025
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

-----X

ALEXANDRIA GARNER,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, SOLANYI PAREDES, YESICA
SANCHES, JOHN DOES (MULTIPLE POLICE OFFICERS
YET TO BE IDENTIFIED)

Defendant.

-----X

INDEX NO. 157291/2025

MOTION DATE 06/06/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for ORDER/JUDGMENT NUNC PRO TUNC.

Upon the foregoing documents, the Order to Show Cause (“OSC”) is granted.

Petitioner Alexandria Garner moved by OSC seeking leave to file a late notice of claim pursuant to General Municipal Law (“GML”) § 50-e(5) and to have same deemed timely served, *nunc pro tunc*, on the grounds that the notice of claim was promptly filed by her newly retained counsel after her underlying criminal case in New York Supreme Criminal Court, Docket Number IND-73241-24/001, was dismissed on April 16, 2025 (NYSCEF Doc. #3). Written opposition was filed, and petitioner filed her reply.

On June 4, 2025, petitioner served a notice of claim without leave of the court against The City of New York, New York City Police Department (“NYPD”), Police Officer (“PO”) Solanyi Paredes, and PO Yesica Sanches (collectively “The City”) asserting claims of assault; battery; false arrest; false imprisonment; malicious prosecution; intentional infliction of emotional distress; negligent infliction of emotional distress; outrageous conduct giving rise to personal injuries;

prima facie tort; violation of civil rights in accordance with 42 USC 1983; negligence; negligent hiring, training, supervising, and retaining of police officers; and respondent superior (NYSCEF Doc. #5).

Petitioner alleges in the notice of claim that on March 26, 2024, she sustained injuries when she was assaulted and falsely arrested in the subway station located at 125th Street and Lexington Avenue, New York County by POs Paredes and Sanches. Petitioner was treated at the hospital for the injuries she sustained and was released from NYPD custody on March 27, 2024.

On June 6, 2025, petitioner filed the instant petition seeking leave to file a late notice of claim. In support of the OSC, petitioner submitted among other things, her own affidavit (NYSCEF Doc. #7); the New York Supreme Criminal Court Certificate of Disposition (NYSCEF Doc. #2); various reports relating to the arrest (NYSCEF Doc. #4); and the Notice of Claim and Affirmations of Service (NYSCEF Doc. #5). Petitioner contends that leave to file a late notice of claim should be granted as all of the essential and necessary facts for The City to conduct its investigation regarding the circumstances of this incident - including the date, time, location, legal theories giving rise to the claims, and the parties involved - are all contained within the records and reports created by the NYPD for the underlying criminal action. Petitioner further contends that The City will not be substantially prejudiced by the delay in filing the notice of claim as they acquired actual knowledge of petitioner's claims within a reasonable time period as required by GML § 50-e(5).

In opposition to the OSC, The City contends that petitioner's OSC should be denied on the grounds that petitioner took over a year after the accrual of her claims to file the instant OSC and that petitioner has not offered a reasonable excuse for this significant delay. Additionally, The City contends that in accordance with the 90 day statutory requirement of GML § 50-e(1)(a), claims for negligence accrue on the date of the alleged wrongful act, which in this case would be the date

petitioner was arrested on March 26, 2024, and that petitioner should have filed her notice of claim for her claims for civil rights violations; assault; battery; abuse of process; negligence; negligent supervision; and use of excessive force on or before June 24, 2024, and that her claims for false arrest and false imprisonment accrue at the time of her release from custody, which occurred on March 27, 2024, and that she should have filed the related notice of claim for those claims on or before June 25, 2024. Further, The City contends that they did not have actual knowledge of the facts of the claims as actual knowledge cannot be inferred upon a municipality through the mere existence of police records and that petitioner has failed to establish her burden that the delay would not cause substantial prejudice.

In her reply, petitioner submitted an NYPD Internal Affairs Bureau (IAB) report dated March 26, 2024 (NYSCEF Doc. #16), which named petitioner as the arrested person and PO Sanches as having used excessive force, as well as a copy of “Body Camera Audit Trails” of POs who were present (NYSCEF Doc. #17).

GML § 50-e (1)(a) provides in pertinent parts that a notice of claim shall be served “within ninety days after the claim arises.” “A cause of action for malicious prosecution accrues when the criminal proceeding terminates favorably to the plaintiff (*Boose v City of Rochester*, 71 AD2d 59, 65, 421 NYS2d 740 [1979]).” (*Bumbury v City of NY*, 62 AD3d 621, 621 [1st Dept 2009]). Petitioner’s causes of action alleging unlawful imprisonment and false arrest accrued upon petitioner’s physical release from custody. (*see id.*, at 621-622; *Nunez v City of NY*, 307 AD2d 218, 219, 762 NYS2d 384 [1st Dept 2003]). Here, petitioner’s claim of malicious prosecution accrued on April 16, 2025, when the criminal charges were dismissed. As such, petitioner’s notice of claim for malicious prosecution was timely served on June 4, 2024, within the 90-day statutory

period. On the other hand, petitioner's notice of claim as to unlawful arrest and unlawful imprisonment is beyond 90 days.

GML § 50-e (5) provides in pertinent parts that upon application for leave to serve a late notice "the court, in its discretion, may extend the time to serve a notice of claim specified in paragraph (a) of subdivision one of this section, whether such service was made upon a public corporation or the secretary of state. The extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation. In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter." (GML § 50-e (5); *see generally*, *Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 45 NYS3d 895, 68 NE3d 714 [2016]; *Matter of Jaime v City of New York*, 41 NY3d 531, 540, 237 NE3d 796, 213 NYS3d 730 [2024]).

While the decision to grant or deny a motion to serve a late notice of claim is discretionary, the decision must be supported by the evidence (*Matter of Newcomb*, 28 N.Y.3d at 465). The question of "acquired actual knowledge of the essential facts constituting the claim" is to be considered "in particular" by the court as great weight is placed on those facts. (*Matter of Jaime v City of New York*, 41 N.Y.3d at 540). "In addition to actual knowledge, the courts must consider "all other relevant facts and circumstances" (General Municipal Law § 50-e [5]), and "the presence or absence of any one factor is not determinative" (*Matter of Morris v County of Suffolk*, 88 AD2d 956, 957, 451 N.Y.S.2d 448 [2d Dept 1982], *affd* 58 NY2d 767 [1982])." (*id.* at 541). "Generally, knowledge of essential facts as to time and place by an actor in a position to investigate will suffice (*see Rosenbaum v City of New York*, 8 NY3d 1, 11, 861 N.E.2d 43, 828 N.Y.S.2d 228 [2006]).

Whether a particular employee's actual knowledge is imputable to the municipality involves a fact-specific inquiry committed to the sound discretion of the trial court, whose determination should not be disturbed on appeal so long as it is supported by facts in the record (*see Dalton*, 107 AD3d at 1518-1519). While the contents of records in the municipality's possession may sometimes be sufficient to demonstrate that a municipality acquired actual knowledge of the essential facts constituting the claim within a reasonable time, "mere possession or creation of . . . records does not ipso facto establish . . . 'actual knowledge'" (*Wally G. v New York City Health & Hosps. Corp. [Metro. Hosp.]*, 27 NY3d 672, 677, 37 N.Y.S.3d 30, 57 N.E.3d 1067 [2016] ["medical records must "evince that the medical staff, by its acts or omissions, inflicted an injury on plaintiff" in order for the medical provider to have actual knowledge of the essential facts" (*id.* at 540-541). "The evidence of actual knowledge need not be exhaustive, provided the petitioner meets the applicable evidentiary burden." (*id.* at 543)].

Here, petitioner made a report to IAB on the date of the arrest alleging that the injuries she sustained were caused by PO Sanches, thereby giving notice to the NYPD. Where defendant investigated the arrests and claims by petitioner, they cannot later say they did not have notice (*see Spruill v City of NY*, 221 AD3d 470, 198 NYS3d 77 [1st Dept 2023]).

While "law office failure generally is not a reasonable excuse for failing to timely serve a notice of claim, failure to offer a reasonable excuse is not necessarily fatal to a motion for leave to serve a late notice (*see Colarossi v City of New York*, 118 AD3d 612, 612, 989 N.Y.S.2d 24 [1st Dept 2014]; *Alladice v City of New York*, 111 AD3d 477, 478, 974 N.Y.S.2d 437 [1st Dept 2013])." (*Clarke v N.Y.C. Transit Auth.*, 222 A.D.3d 552, 553, 202 N.Y.S.3d 89, 90-91[1st Dept 2023]). Plaintiff counsel's excuse of law office failure due to prior counsel failing to file a notice of claim is not alone dispositive of plaintiff's OSC to serve a late notice of claim.

The question of substantial prejudice, or lack thereof, is decided under the burden-shifting framework (see *Matter of Jaime*, 41 N.Y.3d at 541). “[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 N.Y.3d 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...[t]he public corporation, however, is in the best position to know and demonstrate whether it has been substantially prejudiced by the late notice.” (*id.* at 467-468).

Petitioner has met her burden that The City will not be substantially prejudiced by the late notice of claim as they had knowledge of the essential and necessary facts of the incident in the records they prepared in both the IAB investigation and the underlying criminal case. Additionally, petitioner submitted the video and audio recordings of the arrest which was received from The City.

The City has failed to established that it would be substantially prejudiced by the 1 year and 2 month delay in filing the late notice of claim because any video surveillance and audio recordings may no longer be obtainable, that the notice of claim lacks specific facts, which frustrates their ability to identify and interview any potential witnesses to the incident that led to petitioner’s detention, and that the information held by the Criminal Court and the District Attorney’s Office is sealed pursuant to Criminal Procedure Law § 160.50. To the contrary, The City’s records identify the witnesses involved in the arrest on March 26, 2024, and the video and audio records are a part of petitioner’s reply (NYSCEF Doc. # 17). Further, The City will be able to obtain the sealed Criminal Court Records during discovery.

Accordingly, petitioner’s OSC for leave to serve a late notice of claim is granted as the statute of limitation to commence any action has not expired. It is hereby:

ORDERED, that the OSC for leave to serve a late notice of claim is granted; it is further

ORDERED, that the amended notice of claim is deemed to have been timely served, *nunc pro tunc*, from the date the notice of claim was filed; and it is further

ORDERED, that petitioner shall commence a new action and purchase a new index number in the event a lawsuit arising from the amended notice of claim is filed.

This constitutes the Decision and Order of the Court.

ENTER:

1/30/2026
DATE


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

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: