

Matter of Estrada v City of New York

2026 NY Slip Op 30446(U)

February 4, 2026

Supreme Court, New York County

Docket Number: Index No. 160067/2024

Judge: Carol Sharpe

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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. CAROL SHARPE PART 52M

Justice

INDEX NO. 160067/2024
MOTION DATE 10/29/2024
MOTION SEQ. NO. 001

IN THE MATTER OF THE CLAIM OF TOMAS VENCES ESTRADA,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE CITY OF NEW YORK (PARKS AND RECREATION)

Defendant.

DECISION + ORDER ON MOTION

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

were read on this motion to/for LEAVE TO FILE

Upon the foregoing documents, the petition seeking leave to file a late notice of claim is denied.

Petitioner Tomas Vences Estrada filed a petition seeking leave to file a late notice of claim pursuant to General Municipal Law ("GML") § 50-e(5), and having same deemed timely, nunc pro tunc. Petitioner alleges that on February 10, 2024, he sustained injuries when he tripped and fell because of a defective condition of the sidewalk located at or near 150 feet south of the entrance to Highbridge Park on the Harlem River Drive, New York County. The City of New York ("The City") filed written opposition.

Petitioner contends that the petition should be granted because he was physically incapacitated, and The City is not substantially prejudiced by the delay and able to conduct an investigation of the condition as the defective sidewalk is not a transient condition that would have required immediate inspection. In support of the application, petitioner submitted, among other things, records from Harlem Hospital Center (NYSCEF Doc. #4), and the Proposed Notice of Claim dated October 23, 2024, with photographs (NYSCEF Doc. #5). The Harlem Hospital Center records show that petitioner was admitted to the hospital on February 10, 2024, and discharged on February 26, 2024, having undergone an open reduction and internal fixation of the left femur. Upon discharge, petitioner was advised to be non-weight bearing for 10 weeks and to seek outpatient

physical therapy (NYSCEF Doc. #4, Pg. 2). Plaintiff claims that as a result of the injury he was unable to secure counsel in a timely manner (NYSCEF Doc #3, ¶¶ 10-11), and that while The City had no knowledge of his claims during the 90-day statutory period, it reasonably acquired knowledge promptly once he was done convalescing and his retained counsel filed the notice of claim on October 29, 2024.

The City opposes the petition on the grounds that pursuant to GML § 50-e, petitioner was required to file a notice of claim for the injuries he allegedly sustained, within the 90-day statutory time period which accrued from the date of injury on February 10, 2024, and expired on May 10, 2024. The City contends that petitioner failed to satisfy his initial burden to affirmatively demonstrate that The City will not be substantially prejudiced by his failure to timely file a notice of claim as they did not acquire actual knowledge of his accident prior to his filing of the late notice, and that petitioner's alleged physical incapacitation is insufficient in the absence of any supporting medical documentation to constitute a reasonable excuse for failing to timely file a notice of claim.

GML § 50-e (1)(a) provides in pertinent parts that a notice of claim shall be served “within ninety days after the claim arises.” GML § 50-e (5) permits the court, upon application and at its discretion, to extend the time to serve provided the extension does not exceed the time limited for a claimant to commence an action, and reasonable excuse (*Matter of Rivera v NY City Hous. Auth.*, 25 AD3d 450, 807 NYS2d 373 [1st Dept 2006]). “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. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated...” (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 NY3d 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*, 41 NY3d 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). The lack of actual knowledge deprives The City of the opportunity to investigate the circumstances underlying the claim (*Lerner v State of New York*, 72 AD3d 406, 407, 897 NYS2d 100 [2010], *lv. denied*, (15 NY3d 703 [2010]; *Nossogona C. v New York City Health & Hosps. Corp.*, 213 AD3d 407, 408, 183 N.Y.S.3d 374 [1st Dept 2023] [“Given defendants’ lack of notice, the court correctly determined that they have been deprived of the opportunity to conduct a prompt investigation of the merits of plaintiff’s claim and, therefore, prejudiced by plaintiff’s delay in seeking to serve a late notice of claim”]).

Petitioner’s submission of the admission records from Harlem Hospital Center do not establish a reasonable excuse for failing to file a timely notice of claim, as he failed to submit records to document his claim of physical incapacity from his date of discharge on February 26, 2024, until he filed the notice of claim on October 29, 2024 (*Matter of Rivera*, 25 AD3d at 451 [“Initially, petitioner failed to document the illnesses which he says precluded him from timely retaining counsel or filing his notice of claim [internal citation omitted]”]; *Matter of Singleton v City of New York*, 198 AD3d 498-499, 152 NYS3d 608 [1st Dept 2021] [“Petitioner failed to provide a reasonable excuse for the almost one-year delay in filing a notice of claim”]).

The question of substantial prejudice, or the lack thereof, is decided under the burden-shifting framework and “the burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation” (*Matter of Newcomb*, 28 NY3d 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). The length of the delay and the lack of actual knowledge are factors to be considered in determining

whether The City is substantially prejudiced. (*Williams v Nassau County Med. Ctr.*, 6 NY3d 531, 539, 814 NYS2d 580 [2006] [“Like the length of the delay in service, proof that the defendant had actual knowledge is an important factor in determining whether the defendant is substantially prejudiced by such a delay.”]; *Matter of Newcomb*, 28 NY3d at 465).

Petition must be denied as petitioner failed to establish a reasonable excuse for the 8-month delay in filing the notice of claim, failed to submit any evidence that The City acquired actual knowledge of the facts of his claim within the 90 day requirement or a reasonable time thereafter, and failed to meet his initial burden of establishing that The City will not be substantially prejudiced by the failure to timely file the notice of claim, especially when it lacked actual knowledge of facts constituting the underlying claim. It is hereby

ORDERED, that the petition for leave to serve a late notice of claim and to have same deemed served timely, *nunc pro tunc*, is denied in its entirety; it is further

ORDERED, that The City Respondents shall serve a copy of this order with notice of entry upon all parties at the email addresses used by petitioner and the Clerk of the Court within twenty (20) days of the date of this Order, and shall file proof of said service; and it is further

ORDERED, that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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:

February 4, 2026

DATE

HON. CAROL SHARPE, J.S.C.

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

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: