

Young v City of New York
2026 NY Slip Op 31890(U)
April 21, 2026
Supreme Court, Kings County
Docket Number: Index No. 1532/2000
Judge: Lisa Lewis
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At City Part 20 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21st day of April, 2026.

P R E S E N T:

HON. LISA LEWIS,

J.S.C.

-----X
KESHA YOUNG AND KESHAWN YOUNG,

Plaintiffs,

-against-

THE CITY OF NEW YORK AND
THE CITY OF NEW YORK DEPARTMENT OF
HOUSING AND PRESERVATION AND
DEVELOPMENT,

Defendants.
-----X

DECISION & ORDER

Index No. 1532/2000

The following papers read herein:

NYSCEF Doc No.:

MS 3

14-30; 37-45

MS 4

33-35; 47-55; 57

Upon the foregoing papers, it is ordered that the motion and the cross-motion are determined as follows:

Background

In this action to recover damages for personal injuries, plaintiffs Keshae Young (incorrectly suing herein as Kesha Young) (“Keshae”) and Keshawn Young (“Keshawn” and collectively with Keshae, “plaintiffs”) move for an order, in effect, restoring this action to the active calendar and, upon restoration, deeming their mother’s notice of claim, dated May 13, 1998, timely served nunc pro tunc (the “notice of claim”) (NYSCEF Doc No. 17). Defendants, the City of New York (the “City”) and the City of New York Department of Housing and Preservation and Development (“HPD” and collectively with the City “defendants”) cross-

move for an order dismissing this action with prejudice for plaintiffs' (or, more precisely, their mother's) failure to comply with General Municipal Law ("GML") §§ 50 (e) and 50 (i).

By way of background, plaintiffs, fraternal twins, were born in October 1995 and initially resided full time with their mother Andrea Young (the "mother") at 784 Marcy Avenue in Brooklyn, New York. At the time, their maternal aunt Levina Young (the "aunt") was residing a few blocks away at 94 Hancock Street, Apt 1, in Brooklyn, New York (the "Hancock Street apartment"), an old (circa 1901) three-family house that was owned and maintained by defendants. The aunt cared for plaintiff's from approximately six weeks after their birth until sometime between 1999 and 2000. The plaintiffs were in the Hancock Street apartment for ten hours per day, five days per week.

Between July 8, 1997, and February 19, 1998, Keshae's blood lead levels ("BLL") were measured as elevated in the range from 21 units to 26 units (the maximum permissible BLL is 10 units). Likewise, between October 30, 1997, and February 9, 1998, Keshawn's BLLs were also measured as elevated, albeit in the lower range from 18 units to 22 units. Upon inspection, on September 10, 1997, in response to Keshae's elevated BLL, and again on November 3, 1997, in response to Keshawn's elevated BLL, the City's Lead Poisoning Prevention Program discovered the presence of lead in the Hancock Street apartment (part of NYSCEF Doc No. 1). By order, dated September 25, 1997, the New York City Department of Health ("DOH") directed the HPD as the owner/agent of the Hancock Street apartment to remove, correct, or otherwise abate the lead-paint violations.

On May 13, 1998, the mother served defendants with the aforementioned notice of claim on plaintiffs' behalf. It is undisputed that service of the notice of claim was untimely

(see *Young v City of New York*, 164 AD3d 711, 712 [2d Dept 2018]). Thereafter, the mother commenced this action on plaintiffs' behalf, by summons and complaint dated January 3, 2000. Therein, she sought to recover damages for personal injuries to plaintiffs arising from their alleged exposure to lead in the Hancock Street apartment. After a request for judicial intervention was filed on December 4, 2001, both sides attended a preliminary conference on May 2, 2002, and a compliance conference on January 28, 2003. The parties also engaged in discovery during that period. However, according to E-Law, at a status conference in the City Part on June 3, 2003, approximately two months before the note-of-issue due date, this action was administratively "closed" or "purged," with a notation "no activity, pre[-]Note" (NYSCEF Doc Nos. 22 and 45). It is unclear from the record whether a status conference was actually held on June 3, 2003, and if so, whether plaintiff's counsel appeared at that conference. What is clear from the record, however, is that no order dismissing the action was issued. Approximately two years later on March 17, 2005, a pretrial deposition of defendants' witness was conducted. The action remained dormant for the next ten years until January 2015.

The one year and 90-day statute of limitations period for plaintiffs' claims under GML 50-i (1) was due to expire on January 20, 2015, when they would have reached the age of majority,¹ plus two additional days to account for the intervening Sunday and the legal holiday.² On January 15, 2015, five days before the expiration of the statute of limitations,

¹ Where the time for commencing an action on the claim is tolled under CPLR 208 (a) due to infancy, there is a concomitant tolling of the time during which late notice of claim may be served. See *Cohen v Pearl Riv. Union Free School Dist.*, 51 NY2d 256, 263 (1980); *Perry v City of New York*, 238 AD2d 326, 327 (2d Dept 1997).

² General Construction Law § 25-a (1).

plaintiffs filed an order to show cause to restore the action to the active calendar and, upon restoration, for an order deeming their mother's untimely notice of claim as timely served nunc pro tunc (the "prior motion").³ In support plaintiffs submitted, inter alia: (1) a copy of the notice of claim; (2) the affidavits of the mother and each plaintiff; and (3) an affirmation from their counsel explaining that defendants (through the HPD and the DOH) had actual knowledge of plaintiffs' elevated BLLs. As to defendants' actual knowledge, the prior motion cited to the testing laboratory's mandatory reporting of plaintiffs' elevated BLLs to the DOH, and the DOH's responsive order to abate lead in the Hancock Street apartment.⁴

In opposition to the prior motion, defendants cross-moved for dismissal of the complaint for failure to file a timely notice of claim (the "prior cross-motion").

By short-form order, dated September 11, 2015, the court (Jimenez-Salta, J.) denied plaintiffs' prior motion to restore on the grounds that the underlying order to show cause was "defectively served," and granted defendants' prior cross-motion and dismissed the action (the "prior order"). Plaintiffs appealed and on August 15, 2018, the Second Judicial Department reversed the prior order "on the facts and in the exercise of discretion." *Young*, 164 AD3d at 712.⁵

³ Although the order to show cause was signed on January 26, 2015 (which was six days after the expiration of the statute of limitations), the delay was excusable and chargeable to the court staff rather than to plaintiffs. See *T&T Elec. Corp. v Borough Equities, LLC*, 244 AD3d 1269, 1270 (2d Dept 2025).

⁴ Affirmation of Beth J. Schlossman, Esq., dated January 14, 2015, in support of prior motion, ¶¶ 64-68 (NYSCEF Doc No. 24).

⁵ While plaintiffs' appeal was pending, the Second Judicial Department granted, on application, six consecutive extensions of briefing deadlines, by orders, dated June 8, 2016, August 3, 2016, October 20, 2016, January 24, 2017, February 27, 2017, and June 30, 2017. See *Young v City of New York*, 2016 NY Slip Op 75901(U), 2016 NY Slip Op 81534(U), 2016 NY Slip Op 89028(U), 2017 NY Slip Op 61907(U), 2017 NY Slip Op 65418(U), 2017 NY Slip Op 78972(U).

In reversing the prior order, the court remitted the matter to Supreme Court, Kings County, “for a determination on the merits of . . . plaintiffs’ [prior] motion, inter alia, to restore the action to the active calendar and to deem their late notice of claim timely served nunc pro tunc and thereafter a new determination of the defendants’ [prior] cross motion to dismiss the complaint.” *Id.*

Approximately two years later, on December 28, 2020, and again on February 22, 2021, plaintiffs’ counsel inquired to the chambers of Justice Wayne Saitta to obtain a return date for their motion on remittal (NYSCEF Doc Nos. 42-43). The chambers of Justice Saitta advised plaintiffs’ counsel that Justice Saitta was not handling the matter.⁶ According to E-Law, on November 10, 2021, plaintiffs’ prior motion on remittal was initially “adjourned” before Justice Katherine Levine. Subsequently, on March 3, 2022, the prior motion was “decided” by Justice Consuelo Mallafre Melendez. However, neither Justice Levine nor Justice Melendez issued an actual decision on the prior motion and cross-motion.

Three years later on March 21, 2025, plaintiff served the instant motion to restore the matter and related relief. On June 6, 2025, defendant cross-moved for dismissal of the complaint.

Analysis

As a procedural matter, restoration of this action to the active calendar is warranted. Although the entries in the electronic docket reflected that this action was “closed” or “purged” at a status conference of June 3, 2003, no order to that effect was entered, and “thus,

⁶ Justice Jimenez-Salta had been transferred to Nassau County in the interim and plaintiffs’ counsel apparently mistook “Salta” for “Saitta” as the original presiding justice.

despite the e[-]Courts notation, the action was not actually dismissed.” *Wells Fargo, N.A. v Parker*, 210 AD3d 1128, 1130 (2d Dept 2022). Accordingly, this action must be restored to the court’s active calendar. *See Alnoukari v Nokari*, 246 AD3d 1010, 1011 (2d Dept 2026).

As a substantive matter, the mother’s untimely notice of claim on behalf of her then-infant twins is granted. The decision to grant leave to serve a late notice of claim or deem a late notice of claim timely served nunc pro tunc is left to the sound discretion of the trial court. *Matter of Beaton v City of New York*, 186 AD3d 1677, 1678 (2d Dept 2020). In determining whether to grant an application for leave to serve a late notice of claim or to deem a late notice of claim timely served nunc pro tunc, the court must consider all relevant facts and circumstances, including “whether (1) the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, (2) the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim, and (3) the delay would substantially prejudice the public corporation in its defense on the merits.” *Matter of Nadler v City of New York*, 166 AD3d 618, 619 (2d Dept 2018). “Neither the presence nor absence of any one factor is determinative, although it is generally recognized that the question of whether the municipality timely acquired actual knowledge is of great importance.” *Matter of C.N. v City of New York*, 208 AD3d 784, 785 (2d Dept 2022). Actual knowledge of the essential facts underlying the claim means “knowledge of the facts that underlie the legal theory or theories on which liability is predicated in the [] notice of claim; the public corporation need not have specific notice of the theory or theories themselves.” *Matter of A.C. v W. Babylon Union Free School Dist.*, 147 AD3d 1047, 1048 (2d Dept 2017) (internal quotation marks omitted).

Here, plaintiffs demonstrated that defendants were provided with actual notice of their elevated BLLs by virtue of the DOH's order to abate which was issued after the testing laboratories reported their elevated BLLs to the DOH. The DOH's responsive order to defendants to abate lead in the Hancock Street apartment afforded defendants "actual knowledge of the essential facts constituting the claim." *See* General Municipal Law §50-e (5); *Matter of Melendez v City of New York*, 245 AD2d 564 (2d Dept 1997); *Matter of Guzman v County of Westchester*, 208 AD2d 925 (2d Dept 1994); *Matter of Underwood v New York City Hous. Auth.*, 177 AD2d 698, 699 (2d Dept 1991). Further, defendants were able to schedule and conduct a GML § 50-h hearing with the mother on August 20, 1998, or approximately three months after service of the notice of claim.⁷ *See Herry v New York City Hous. Auth.*, 237 AD3d 705, 707 (2d Dept 2025); *see also S.A.N. v New York City Hous. Auth.*, 233 AD3d 557 (1st Dept 2024).

Furthermore, plaintiffs "made an initial showing that the defendants would not suffer prejudice by [their mother's] delay in serving the notice of claim, and the defendant[s] failed to rebut the [plaintiffs'] showing with particularized indicia of prejudice." *Kazeem v New York City Health & Hosps. Corp. (Queens Hosp. Ctr.)*, ___ AD3d ___, 2026 NY Slip Op 01497, *2 (2d Dept 2026). In opposition defendants failed to make "a particularized evidentiary

⁷ As early as 1993, the aunt as the tenant of the Hancock Street apartment informed the HPD's building manager that she had peeling paint in her apartment, and that children under six years of age were living in her apartment. *See* Sayed Khalil's EBT transcript, page 20, line 23 to page 22, line 4 (part of NYSCEF Doc No. 1). In 1994, the aunt filed a timely notice of claim for lead exposure on behalf of her infant son who was then residing in the Hancock Street apartment. *See Tyquan Young, an Infant, by his Mother and Natural Guardian, Levina Young, and Levina Young, Individually v City of New York*, index No. 13025/1994 (Sup Ct, Kings County). Tyquan's BLL was elevated at 21 units on October 11, 1993. Five years later in 1999, the aunt filed another timely notice of claim likewise for lead exposure on behalf of her infant daughter who was also then residing in the Hancock Street apartment. *See Latoya Perkins, an Infant by her Mother and Natural Guardian, Levina Young, and Levina Young, Individually v City of New York*, index No. 16998/1999 (Sup Ct, Kings County). Latoya's BLL was elevated at 20 units on July 2, 1998. As noted, both plaintiffs tested for elevated BLLs as late as five months prior in February 1998.

showing that [defendants] will be substantially prejudiced if the late notice [of claim] is allowed.” *Matter of Newcomb v Middle Country Cent. School Dist.*, 28 NY3d 455, 467 (2016), *rearg denied* 29 NY3d 963 (2017); *see Matter of Battle v City of New York*, 261 AD2d 614 (2d Dept 1999).

Accordingly, the remaining branch of plaintiffs’ motion to deem the mother’s notice of claim timely filed nunc pro tunc is granted in the Court’s discretion. Conversely, defendants’ cross motion for dismissal of this action for failure to file a timely notice of claim is denied. *See Matter of Felice v Eastport/S. Manor Cent. School Dist.*, 50 AD3d 138, 149 (2d Dept 2008) (*citing Matter of Edwards v City of New York*, 2 AD3d 110, 111 [1st Dept 2003], and *Matter of Holmes v City of New York*, 189 AD2d 676, 678 [1st Dept 1999]).

The caption of this action is amended to reflect the correct spelling of Keshae Young’s first name as Keshae with an “e” at the end.

The Court considered the parties’ remaining contentions and found them either without merit or moot in light of its determination.⁸ All relief not expressly granted herein is denied.

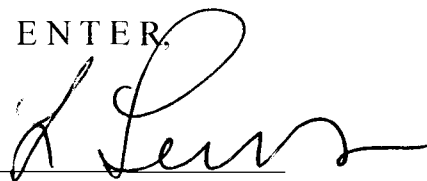
The foregoing constitutes the decision and order of the court.

FILED

MAY 04 2026

KINGS COUNTY CLERK'S OFFICE

ENTER,



HON. LISA LEWIS
J. S. C.

Hon. Lisa Lewis

KINGS COUNTY CLERK'S OFFICE

MAY 04 2026

FILED

⁸ Contrary to defendants’ contention, the fact that the notice of claim at issue was filed by the mother on plaintiffs’ behalf, rather than by plaintiffs themselves when they reached the age of majority, is immaterial. The substance – the content of the underlying claim – must prevail over its form (*i.e.*, that it was signed by the mother on behalf of the then-infant plaintiffs, rather than re-signed by the now adult plaintiffs).