

<b>Barrett v New York City Tr. Auth.</b>
2022 NY Slip Op 34230(U)
December 14, 2022
Supreme Court, New York County
Docket Number: Index No. 161632/2021
Judge: William Perry
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 23

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DANIEL BARRETT,	<b>INDEX NO.</b> <u>161632/2021</u>
Petitioner,	<b>MOTION DATE</b> <u>12/29/2021</u>
- v -	<b>MOTION SEQ. NO.</b> <u>001</u>
NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY	<b>DECISION + ORDER ON MOTION</b>
Respondent.	
-----X	

HON. WILLIAM PERRY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 10  
 were read on this motion to/for LEAVE TO FILE.

In this special proceeding, petitioner seeks leave to file a late notice of claim pursuant to Section 50-e (5) of the General Municipal Law and CPLR 403 for an order granting leave to serve a late notice of claim. Petitioner alleges that on January 31, 2021 he slipped on ice and snow while walking on the platform at the Wall Street station, causing him to fall onto the subway tracks, thereby fracturing two ribs and suffering breathing complications.

Petitioner asks the court to extend the time permitted to file the notice of claim because petitioner had a reasonable excuse for his failure to timely serve the notice and because respondents received actual notice of the facts immediately following the incident as reported by the station agent Nagendra Shah who submitted a customer incident report stating his knowledge that police and EMS responded to the station because someone had fallen onto the tracks. (NYSCEF Doc Nos. 1 and 2). Petitioner contends that respondents had actual knowledge of the facts constituting the incident and the opportunity to investigate the incident within ninety days, and as such, the extension sought does not substantially prejudice respondents.

Petitioner seeks an Order pursuant to General Municipal Law Section 50-e (5), granting leave to serve and file a late Notice of Claim against respondents NEW YORK CITY TRANSIT AUTHORITY, and METROPOLITAN TRANSPORTATION AUTHORITY. The motion is submitted without opposition.

Pursuant to General Municipal Law ("GML") § 50-i(a), no personal injury action may be commenced against the City unless a notice of claim was served upon it within 90 days after the subject claim arose. A notice of claim must state "the time when, the place where and the manner in which the claim arose." General Municipal Law § 50-e (2). The purpose of the statutory notice of claim requirement is to afford the City adequate opportunity to promptly investigate, collect and preserve evidence, and evaluate the merit of a claim while information is still readily available. (*Brown v. City of New York*, 95 NY2d 389, 392, 740 N.E.2d 1078, 718 N.Y.S.2d 4 [2000]; *Bowers v City of New York*, 147 AD3d 894, 895, 47 N.Y.S.3d 409 [2d Dept. 2017]).

General Municipal Law § 50-e(5) grants the court discretion to extend the time permitted for filing a late notice of claim, by considering whether (1) the petitioner has a reasonable excuse for the failure to serve a timely notice of claim; (2) the municipality received actual notice of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and (3) the delay would substantially prejudice the municipality in its defense on the merits. (*Mtr. of Shavreshyan v. City of New York*, 207 AD3d 470, 169 N.Y.S.3d 543 [2d Dept. 2022]). The presence or absence of any one factor is not determinative. (*N.F. v City of New York*, 161 AD3d 1046, 1047, 77 N.Y.S.3d 712 [2d Dept. 2018]).

Because of its remedial nature, the statute must be liberally construed (see *Camacho v. City of New York*, 187 A.D.2d 262, 589 N.Y.S.2d 421 [1st Dept. 1992]) and "should not operate to frustrate the rights of those with legitimate claims." (*Moynihan v New York City Health &*

*Hosp. Corp.*, 120 AD3d 1029, 1038, 993 N.Y.S.2d 260 [1st Dept. 2014] citing *Matter of Porcaro v City of New York*, 20 AD3d 357, 799 N.Y.S.2d 450 [1st Dept. 2005]).

It is well settled that the presence or absence of any of the three factors is not necessarily determinative (see *Matter of Thomas v City of New York*, 118 AD3d 537, 988 N.Y.S.2d 152 [1st Dept. 2014] and the absence of a reasonable excuse for the delay is not necessarily fatal. (*Matter of Sosa v City of New York*, 124 AD3d 546, 2 N.Y.S.3d 111, 2015 NY App Div LEXIS 658 [1st Dept. January 27, 2015], citing *Rosario v New York City Health & Hosp. Corp.*, 119 AD3d 490, 990 N.Y.S.2d 506 [1st Dept. 2014]; *Matter of Thomas v City of New York*, 118 AD3d 537, 537-538, 988 N.Y.S.2d 152 [1st Dept. 2014]; see also *Matter of Dell'Italia v. Long Is. R.R. Corp.*, supra at 759).

Here, petitioner argues that he should be granted leave to file his notice of claim as he has demonstrated that the statutory factors have been satisfied. Specifically, he claims that the action was commenced within one year and 90 days of the injury-causing event; that he has demonstrated a reasonable excuse for his delay in filing as set forth in the verified petition. Petitioner retained counsel on April 9, 2021 who then sought to obtain further information necessary to file the claim. Petitioner contends that Respondents have not been prejudiced by the delay because notice of Petitioner's injuries was received immediately by virtue of the police and EMS being called to the scene thereby giving respondents actual knowledge of the facts constituting the incident and the opportunity to investigate the incident within ninety days.

As noted, the respondents have not opposed the petitioner's application seeking leave to file a late notice of claim. The court has reviewed the papers submitted in support of the petition and has reviewed the proposed Notice of Claim. Petitioner's motion seeking leave to file a late

notice of claim against respondents pursuant to General Municipal Law Section 50e-(5), is granted. Accordingly, it is

ADJUDGED that the petition for leave to serve a late notice of claim is granted; and it is further

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

12/14/2022  
DATE

  
WILLIAM PERRY, J.S.C.

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