

Matter of Kastle v Town of Kent
2012 NY Slip Op 32964(U)
December 11, 2012
Sup Ct, Putnam County
Docket Number: 2066-2012
Judge: Lewis Jay Lubell
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To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF PUTNAM**

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In the Matter of the Application of BARBARA B. KASTLE and MATTHEW L. KASTLE, individually and as Joint Administrators of the Estate of MICHAEL KASTLE, Deceased,

Petitioners,

-against -

THE TOWN OF KENT, NEW YORK, TOWN OF KENT POLICE OFFICER VINCENT E. BADE, and VINDENT E. BADE, Individually, TOWN OF KENT POLICE OFFICER CHRIS TOMPKINS, TOWN OF KENT POLICE OFFICER DARREN M. CEA, TOWN OF KENT POLICE OFFICER VANDERWOOD (first name unknown), TOWN OF KENT POLICE OFFICERS JOHN DOES 1,2,3 and 4, said individuals being employees of the TOWN OF KENT whose identities are presently unknown, THE TOWN OF KENT POLICE DEPARTMENT, IN WHOLE, THE COUNTY OF PUTNAM, NEW YORK, THE PUTNAM COUNTY SHERIFF'S OFFICE, AND PUTNAM COUNTY SHERIFF J.P. KERWICK, THE TOWN OF EAST FISHKILL, NEW YORK, TOWN OF EAST FISHKILL OFFICER KYLE P. DOUGHTY, TOWN OF EAST FISHKILL POLICE OFFICER DANIEL P. DIDATO, TOWN OF EAST FISHKILL POLICE OFFICER RYAN J. ANGIOLETTI, TOWN OF EAST FISHKILL POLICE OFFICERS MARK DOES 1,2,3 and 4, said individuals being employees of the TOWN OF EAST FISHKILL,

Respondents.

For leave to file a late Notice of Claim, and other relief.

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LUBELL, J.

DECISION & ORDER

Index No. 2066-2012

Sequence No. 1

The following papers were considered in connection with this motion by petitioners for an Order (a) pursuant to General Municipal Law §50-e(5) for leave to file a late Amended Notice of Claim, (b) pursuant to CPLR §3102(c) for pre-action disclosure; and (c) pursuant to CPLR §6311 for a preliminary injunction requiring respondents to refrain from destroying, altering, amending and/or otherwise impairing certain alleged relevant and material investigative documents and items:

PAPERS	NUMBERED
Motion/Affirmation/Exhibits (Kastle)	1
Affirmation in Opposition/Exhibit A (T/East Fishkill)	2
Affirmation in Opposition/Exhibit A (T/Kent)	3
Affirmation in Opposition (Putnam County)	4
Reply Affirmation/Exhibits A-E (Kastle)	5

Barbara B. Kastle and Matthew L. Kastle, individually and as Joint Administrators of the Estate of Michael Kastle ("Michael"), their deceased son, move for the relief hereinabove specified in connection with their claims of harassment, conscious pain and suffering, wrongful death and, among other things, Federal Civil Rights violations against the various defendants in connection with allegations of a continuous pattern of conduct commenced on April 27, 2011, and ending with Michael's death on April 8, 2012.

General Municipal Law §50-e(5) Application:

Upon the consent of the Town of Kent defendants, and over the objection of the remaining defendants, the petitioners' application to file the Amended Notice of Claim attached to the petition "so as to incorporate State common law negligence and wrongful death claims into the action" is granted.

General Municipal Law §50-e(5) provides, in pertinent part:

Upon application, 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. 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. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated, or died before the time limited for service of the notice of claim; . . .; and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.

At the outset, the petitioners have demonstrated a reasonable excuse for their tardiness, given among other factors, the April 8, 2012, death of their son and their May 24, 2012, appointment as administrators.

Furthermore, the Court is satisfied that respondents "acquired actual knowledge of the essential facts constituting the claim within [ninety (90) days after the claim arose] or within a reasonable time thereafter" (GML §50-e[5];) which is "pertinent" to the Court's consideration of the application lending strong support to petitioners' position (see Caselli v. City of New York, 105 A.D.2d 251, 256 [2d Dept., 1984]). In addition, given the overall involvement of the respondents individually and collectively, as the case may be, the Court is not persuaded that any of them has suffered such prejudice as would warrant the denial of the application (see, General Municipal Law 50-e[5]).

Finally, given the allegations that respondents embarked upon a systematic and continuous course of conduct culminating in Michael's death on April 8, 2012, the Court finds that this application was made within the appropriate limitations period (Tomlinson v. NYCHHC, 190 AD2d 806, 807 [2nd Dept., 1993]).

Pre-Action Disclosure - CPLR 3102(c)

Section 3102(c) of the CPLR provides:

Before action commenced. Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

Upon consideration of the detailed allegations already advanced in these papers by petitioner against respondents, the Court is not persuaded that the requested pre-action disclosure is needed "to aid" in bringing the contemplated action. In any event, given the preponderance of overbroad requests, "the court notes that it is not its role to attempt to parse the acceptable from the objectionable" (Show Lain Cheng v. Young, 25 Misc 3d 1227(A) [Sup Ct 2008] affd, 60 AD3d 989, 878 NYS2d 367 [2d Dept 2009] citing Haszinger v. Prayer, 12 AD3d 485, 485 [2004][noting that the court is not required to "prune" an improper discovery demand]).

Finally, the scant argument made by petitioners in their application for an order directing the preservation of "evidence sought, insofar as the evidence is relevant to the forthcoming litigation" (Par. "15", Affirmation of Eileen T. Rohan, Esq.), coupled with the overbroad nature of the requests, warrant denial of this aspect of petitioner's request.

Based upon the foregoing, it is hereby

ORDERED, that, the petition is denied except to the extent that the Amended Notice of Claim annexed as Exhibit "C" to the petition is deemed duly and timely served.

The parties are reminded that if and when plaintiff brings a plenary action, same shall be made via a newly initiated action, index number and RJI.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Carmel, New York
December 11, 2012

S/

HON. LEWIS J. LUBELL, J.S.C.

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