

**Lodziato v City of New York**

2019 NY Slip Op 31032(U)

April 17, 2019

Supreme Court, New York County

Docket Number: 159180/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 32

*Justice*

-----X

THOMAS LODZIATO,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF  
EDUCATION, NEW YORK CITY SCHOOL CONSTRUCTION  
AUTHORITY, LEON D. DEMATTEIS CONSTRUCTION  
CORPORATION

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 16,  
17, 19, 20

were read on this motion to/for

DISMISS

**DECISION AND ORDER**

Moving defendant New York City School Construction Authority's motion to dismiss is denied.

**Background**

This case stems from injuries allegedly suffered by plaintiff on September 8, 2017 while he was performing construction work at a school in Manhattan. It is undisputed that plaintiff commenced a personal injury lawsuit on October 3, 2018, which is more than one year but less than one year and ninety days from the date of the accident. If the statute of limitations is one year, then this case is untimely as against movant. If the statute of limitations is one year and ninety days, then the case is timely. This motion calls upon this Court to determine the appropriate statute for cases against this movant.

New York City School Construction Authority brings this motion to dismiss, alleging that that the suit is barred by the statute of limitations pursuant to Public Authorities Law ("PAL") §

1744(1), which calls for a one year statute of limitations.<sup>1</sup> In response, plaintiff claims that the Public Authorities Law is not the applicable statute. Instead, plaintiff argues that the one year and ninety day statute provided in the 2013 Uniform Notice of Claim Act, as codified in CPLR § 217-a (hereinafter CPLR 217-a), is the controlling law and applies to New York City public entities that are subject to a notice of claim. Neither party denies that the New York City School Construction Authority is an entity that is subject to a notice of claim and that a notice of claim was timely filed here.

### Discussion

CPLR 217-a states

#### **Actions to be commenced within one year and ninety days**

“Notwithstanding any other provision of law to the contrary, and irrespective of whether the relevant statute is expressly amended by the uniform notice of claim act, every action for damages or injuries to real or personal property, or for the destruction thereof, or for personal injuries or wrongful death, against any political subdivision of the state, or any instrumentality or agency of the state or a political subdivision, any public authority or any public benefit corporation that is entitled to receive a notice of claim as a condition precedent to commencement of an action, shall not be commenced unless a notice of claim shall have been served on such governmental entity within the time limit established by section fifty-e of the general municipal law, and such action must be commenced in compliance with all the requirements of section fifty-e and subdivision one of section fifty-i of the general municipal law. Except in an action for wrongful death against such an entity, an action for damages or for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law, whichever is longer. Nothing herein is intended to amend the court of claims act or any provision thereof.”

<sup>1</sup> Defendant urges the Court to follow Justice Saunders’ 2018 decision, holding that PAL1744 governs the statute of limitations for a case against the New York City School Construction Authority (*Stack v City of New York*, Sup Ct, New York County, August 14, 2018, Saunders V., index No. 152824/2018). That decision, however, was decided without opposition and therefore has no persuasive value.

The issue in this case is whether PAL §1744 or CPLR 217-a governs the statute of limitations in cases against movant. Defendant argue that the Uniform Notice of Claim Act (now codified as CPLR 217-a) does not supersede PAL §1744 because § 1744 was not expressly listed in the Uniform Notice of Claim Act as being subject to a change in statute of limitations, whereas other sections of PAL were explicitly listed. However, this argument fails because the one year and ninety day statute of limitations applies to statutes, “irrespective of whether the relevant statute is expressly amended by the uniform notice of claim act...” (CPLR 217-a).

Movant further argues that even if CPLR 217-a is the governing law, the one year statute of limitations in PAL § 1744 still applies because CPLR 217-a allows for a different statute of limitations to apply if otherwise prescribed. Movant cites the following portion of CPLR 217-a to support that point: [an action] “shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law...” However, this portion of the statute as cited in the defendant’s papers leaves out a crucial part of the statute. The full text of the statute that defendant cites, states that an action, “shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued or within the time period otherwise prescribed by any special provision of law, *whichever is longer*” (emphasis added). Thus, even if another statute of limitations governs, CPLR 217-a makes it clear that whichever statute of limitations is *longer* controls.

The Court finds that CPLR 217-a is the governing law. It was enacted in order to set a uniform process for causes of action against state or municipal entities, and public authority or public benefit corporations (New York Bill Jacket, 2013 A.B. 1051, Ch. 24). Section 217-a of the

CPLR created a uniform statute of limitations of one year and ninety days for personal injury cases brought against such entities, which includes the movant here.

Accordingly, it is hereby

ORDERED that the defendant's motion to dismiss is denied, and it is further

ORDERED that the defendant answer pursuant to the CPLR.

Counsel are directed to appear for a preliminary conference in Room 432 at 60 Centre Street on June 11, 2019 at 2:15 pm.

4-17-19

DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

ARLENE P. BLUTH, J.S.C.  
**HON. ARLENE P. BLUTH**