

Lorenzo v City of New York

2020 NY Slip Op 30168(U)

January 21, 2020

Supreme Court, New York County

Docket Number: 161428/2019

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART IAS MOTION 62
Justice
INDEX NO. 161428/2019
CASINE LORENZO, Petitioner, MOTION DATE 1/9/2020
- v - MOTION SEQ. NO. 001
THE CITY OF NEW YORK, Respondent. DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9 were read on this motion to/for LEAVE TO FILE LATE NOTICE OF CLAIM

Petitioner Casine Lorenzo moves, pursuant to General Municipal Law (GML) § 50-e, for leave to file a late Notice of Claim upon Respondent The City of New York (the "City"). The City has not filed any written opposition and did not appear on the return date. For the reasons below, the Court grants the motion.

Petitioner alleges that on February 20, 2019, while appearing in Criminal Court of the City of New York, County of Bronx, City policy officers searched, arrested, and imprisoned Petitioner without probable cause (NYSCEF Doc. No. 1 ¶ 2). Petitioner also alleges that he was forced to appear numerous times until October 16, 2019, at which time the charges were totally dismissed (id.). Petitioner filed this Petition/motion on November 22, 2019, seeking leave to file a late notice of claim alleging various causes of action including "false imprisonment, battery, false arrest, and malicious prosecution" (id.; Pet'r Exh B). Petitioner argues that the City had notice of the essential facts and circumstances, that the claim is meritorious, and that there is no prejudice to the City.

Pursuant to General Municipal Law (“GML”) 50-i (1), service of a timely notice of claim is a condition precedent to filing a claim against “a city, county, town, village, fire district or school district.” Said notice of claim must be filed within 90 days after the claim arises (GML 50-i). However, upon application, courts have discretion to extend the time to serve a notice of claim, provided that the extension does not exceed the statute of limitation applicable to actions against a public corporation (GML 50-e [5]). Courts must consider whether the claimant made an excusable error concerning the identity of the public corporation; whether the delay would substantially prejudice the public corporation in its defense; and whether the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim (*Rodriguez v City of New York*, 172 AD3d 556, 557 [1st Dept 2019]).

Petitioner first explains that the notice of claim was not filed earlier because “Petitioner was just recently advised by his criminal defense attorney after the dismissal that he had a civil claim for this incident” (*NYSCEF 2 ¶ 6*). However, Petitioner’s ignorance of the law is not an acceptable excuse for failing to serve a timely notice of claim (*Gaudio v City of New York*, 235 AD2d 228, 228 [1st Dept 1997]). Nevertheless, none of the enumerated factors is controlling (*Townson v New York City Health and Hosps. Corp.*, 158 AD3d 401 [1st Dept 2018]), and “the lack of excuse is not fatal” (*Rodriguez v City of New York*, 172 AD3d 556 [1st Dept 2019]).

The most important factor, “based on its placement in the statute and its relation to other relevant factors” is whether the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days of the accrual of the claim or a reasonable time thereafter (*Andrews v Long Is. R.R.*, 110 AD3d 653, 653 [2d Dept 2013] citing *Matter of Felice v. Eastport/South Manor Cent. School Dist.*, 50 AD3d 138, 147 [2d Dept 2008]; see GML 50-e [5]; *Townson*, 158 AD3d 401).

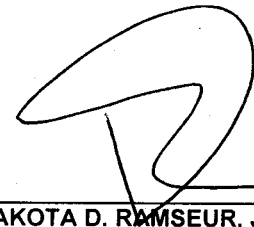
Significantly, knowledge of a claim for malicious prosecution “may be imputed to the municipality through the officers in its employ who made the arrest or initiated the prosecution” (*Justiniano v New York City Hous. Auth. Police*, 191 AD2d 252 [1st Dept 1993]) because “the Police Department had all essential facts in its possession” (*Nunez v City of New York*, 307 AD2d 218 [1st Dept 2003] [false arrest/imprisonment and malicious prosecution claim]). Here, Petitioner rightly argues that knowledge of the underlying facts can be imputed to the City because its police officers and prosecutors were involved in processing and prosecuting Petitioner (*NYSCEF 2 ¶ 7*).

With respect to prejudice, “[t]he burden on the issue of substantial prejudice potentially associated with a late notice of claim rests in the first instance with the petitioner. This showing need not be extensive, but... must present some evidence or plausible argument that supports a finding of no substantial prejudice” (*Townson*, 158 AD3d at 404). Once a petitioner has made this initial showing, “the public corporation must respond with a particularized evidentiary showing that the corporation will be substantially prejudiced if the late notice is allowed” (*Townson*, 158 AD3d at 404, quoting *Newcomb* at 466-467 [2016] [leave granted upon plaintiff’s showing of reasonable excuse and no prejudice despite defendant’s lack of actual knowledge]). Here, Petitioner satisfies his burden by arguing that the “delay is not prejudicial to the [City] in that the District Attorney investigated the occurrence and continued to prosecute after the arrest” (*NYSCEF 2 ¶ 7*). It is therefore

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.

This constitutes the decision and order of the Court.



1/21/2020

DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE