

Lewis v New York City Hous. Auth.
2020 NY Slip Op 34182(U)
December 17, 2020
Supreme Court, New York County
Docket Number: 152777/2020
Judge: David Benjamin Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

-----X

KIM LEWIS

Petitioner,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X

INDEX NO. 152777/2020

MOTION DATE 09/02/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10 were read on this motion to/for EXTEND - TIME.

Petitioner’s motion to extend the time to file a notice of claim against the New York City Housing Authority (“NYCHA”) is granted. Petitioner alleges that on October 6, 2019, she was caused to slip and fall on a dangerous and hazardous accumulation of water that was caused to be and remain on her kitchen floor as a result of a leaking and broken radiator. She further alleges that she had complained to both the building superintendent and the staff of NYCHA offices many times about this leak well before her accident and that respondent’s staff had been in her apartment on prior occasions but never fixed the condition. Following her accident, petitioner alleges that, on two occasions, she reported her accident to Housing Assistants employed by the respondent; the first report was the day after the accident and the second report a few days later. After these reports, NYCHA employees came to petitioner’s apartment to inspect the radiator in order to determine the problem was with the radiator, but respondent again failed to fix the issue, and the radiator remained broken through the filing of this petition. It is not disputed that petitioner failed to file a notice of claim within the required 90 days under section 50-e of the

General Municipal Law and this motion was filed approximately 69 days after the notice of claim should have been filed.

Section 50-e(5) sets forth that a Court may extend the time to file a notice of claim and permit a late filing under certain circumstances. Specifically, a Court needs to determine “whether within 90 days or a reasonable time thereafter the public corporation (or its attorney or insurance carrier) acquired actual knowledge of the facts underlying the claim” (*id.*). “In deciding whether to grant an extension, the court must also consider a host of factors, including infancy and whether allowing late filing would result in substantial prejudice to the public corporation” (*Williams ex rel. Fowler v Nassau County Med. Ctr.*, 6 NY3d 531, 535 [2006]). Courts have also considered whether a petitioner has offered a reasonable excuse for the delay in filing the late notice (*Plaza ex rel. Rodriguez v New York Health and Hosps. Corp. (Jacobi Med. Ctr.)*, 97 AD3d 466, 468 [1st Dept 2012], *affd sub nom. Plaza ex rel. Rodriguez v New York Health and Hosps. Corp.*, 21 NY3d 983 [2013]). Plaintiff’s ignorance of the law is not a reasonable excuse (*Basualdo v Guzman*, 110 AD3d 610 [1st Dept 2013]).

In *Matter of Newcomb v Middle Country Cent. School Dist.* (28 NY3d 455, 465 [2016]), after reaffirming the principal that the Court’s decision to grant or deny a motion to serve a late notice of claim is “purely a discretionary one,” the Court of Appeals provided guidance on how a Court should determine whether allowing late filing would result in substantial prejudice to the public corporation and this prong’s interplay with the knowledge of the facts underlying this prong (*id.*). The Court of Appeals held:

that the burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation. Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice.

(*id.* at 466). The Court then found that although the lower Courts properly found that the public entity did not have actual knowledge of the essential facts constituting the claim within the 90-day statutory period or a reasonable time thereafter, since they had not properly applied the burden, the case was remanded.

In performing the above analysis, in this case, the proffered excuse for the delay is that petitioner thought she had done what was needed by reporting the accident to NYCHA right away. It is not disputed that such a report does not constitute the filing a notice of claim.

Although petitioner may have not known about the ninety-day notice of claim requirement, as stated above, ignorance of the law is not a reasonable excuse.

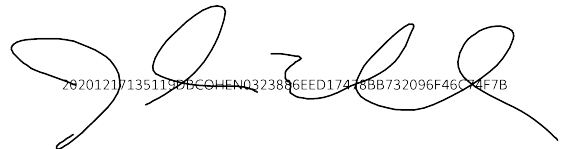
However, there is ample support for a finding that respondent had all of the essential facts constituting the claim within the 90-day period after the incident and even if it didn't that respondent will not suffer substantial prejudice. First, this action is for personal injury relating to an alleged dangerous condition involving a radiator. Petitioner has demonstrated that respondent had the following facts within the 90-day period: that the accident occurred; that it involved a faulty radiator, that she had been injured and that she had complained of the defect prior to the injury. Further, petitioner alleges that within a few days of the accident, respondent came to her apartment and saw the radiator. With respect to prejudice, petitioner has not only demonstrated that respondent had notice -- both before and after the incident -- and the opportunity to inspect the radiator, but that it actually came to the apartment to inspect. Indeed, respondent will suffer no prejudiced from the passage of time as petitioner contends that as of the filing of this motion, the radiator remains in its broken condition. Having established this non-extensive burden, the burden shift to respondent to come forward with particularized evidence of prejudice. Respondent has not rebutted petitioner's showing. In its argument, respondent, citing to Second Department

case law that predates the Court of Appeals ruling in *Newcomb*, simply states that it is “not able to conduct a timely investigation of the matter and now with each passing day the prejudice to NYCHA’s defense increases” – such statement does not meet NYCHA’s burden of demonstrating prejudice with particularized evidence.

Accordingly, upon a balancing the factors to be considered on this petition, as respondent had the essential facts during the notice of claim period and will not suffer any demonstrable prejudice, the petition must be granted. It is hereby

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.



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12/17/2020
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE