

**Griffin v City of New York**

2022 NY Slip Op 33237(U)

September 26, 2022

Supreme Court, New York County

Docket Number: Index No. 158006/2021

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

-----X

ANTHONY GRIFFIN,

Plaintiff,

- v -

THE CITY OF NEW YORK, POLICE OFFICER WALTER
MANCILLA, SERGEANT FRANCISCO GARCIA, JOHN
DOES 1 - 4

Defendants.

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INDEX NO. 158006/2021

MOTION DATE 06/07/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 10, 11, 12, 14, 22

were read on this motion for LEAVE TO FILE

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion for JUDGMENT - DEFAULT

On August 26, 2021, plaintiff commenced this action for, inter alia, false arrest and malicious prosecution (NYSCEF Doc. No. 1 [Complaint]). On August 30, 2021, plaintiff moved pursuant to General Municipal Law §50-e for leave to serve a late Notice of Claim (motion sequence 001). Defendants opposed the motion. While plaintiff's first motion was sub judice, plaintiff filed another motion, pursuant to CPLR §3215, seeking a default judgment against defendants Police Officer Walter Mancilla and Police Sergeant Francisco Garcia (motion sequence 002). Defendants also opposed this motion and cross-moved to compel plaintiff to accept the late answer filed by defendant the City of New York on behalf of all defendants.

These motions are consolidated for disposition. For the reasons set forth below, plaintiff's motion for leave to serve a late notice of claim is granted. Plaintiff's motion for a default judgment is denied and defendants' cross-motion to compel plaintiff to accept their late answer is granted.

### DISCUSSION

The Court addresses these motions in the order in which they were filed.

Plaintiff's motion for leave to file a late notice of claim is granted. General Municipal Law ("GML") §50-e(1)(a) requires that the notice of claim be served on the municipality within ninety days after the claim arises (See e.g., Mazzocchi v City of New York, 2018 NY Slip Op 31191[U], \*2 [Sup Ct, NY County 2018]). A plaintiff who misses this deadline may nevertheless move for leave to serve a late notice of claim until the expiration of the one year and ninety days statute of limitations (See GML §50-e[5]; CPLR §217-a).

While "[s]ervice of a notice of claim ... is a condition precedent to a lawsuit against a municipal corporation" (Davidson v Bronx Mun. Hosp., 64 NY2d 59, 61 [1984]), GML §50-e "is not intended to operate as a device to frustrate the rights of individuals with legitimate claims" and the Court may, in its discretion, excuse a delay in filing a notice of claim where the movant presents a reasonable excuse for the delay and establishes that the municipality obtained "actual knowledge of the essential facts" in a timely manner and has not been prejudiced by the delay (See Orozco v City of New York, 200 AD3d 559-560 [1st Dept 2021] [internal citations omitted]). A "failure to set forth a reasonable excuse is not, by itself, fatal to the application" where plaintiff establishes that the City had actual notice and will suffer no prejudice (Velazquez ex rel. Segarra v City of New York Health and Hosps. Corp. (Jacobi Med. Ctr.), 69 AD3d 441, 442 [1st Dept 2010] citing Matter of Ansong v City of New York, 308 AD2d 333 [2003]).

Defendants argue that plaintiff has not carried its burden to establish actual notice or an absence of prejudice. The Court disagrees. In a false arrest and malicious prosecution action such as this one, the City has actual notice of the essential facts of the claim since “members of the municipality’s police department participate in the acts giving rise to the claim, and reports and complaints have been filed by the police” (Orozco v City of New York, 200 AD3d 559 [1st Dept 2021] [internal citations and quotations omitted]; see also Ansong v City of New York, 308 AD2d 333, 333-34 [1st Dept 2003]). Plaintiff has also established that the City has not been prejudiced by the delay in light of the City’s actual knowledge of the facts constituting the claim and the fact that “records pertaining to petitioner’s arrest, as well as the favorable disposition of charges against him, are presumably still in existence” (Ansong v City of New York, 308 AD2d 333, 334 [1st Dept 2003]; see also Orozco v City of New York, 200 AD3d 559 [1st Dept 2021]). Finally, defendants’ argument that this motion is fatally undercut by the absence of an affidavit from plaintiff regarding the facts of this case is also unavailing, as a sworn and notarized verification is attached to the proposed notice of claim submitted in connection with plaintiff’s motion (See NYSCEF Doc. No. 4). In light of the foregoing, plaintiff’s motion for leave to file a late notice of claim is granted, and the Court turns to plaintiff’s motion for a default judgment as against defendants Walter Mancilla and Francisco Garcia.

Plaintiff’s motion for a default judgment is denied. Even assuming, arguendo, that plaintiff has satisfied the requirements of CPLR §3215(f), defendants have set forth a reasonable excuse for the City’s delay in appearing on behalf of Mancilla and Garcia due to its need to first determine “whether Corporation Counsel could represent [them under General Municipal Law §50-k(2)]” as well as “a meritorious defense, reflected in [the City’s] timely answer that interposed affirmative defenses” (Alexandre v Martinez, 161 AD3d 633 [1st Dept 2018]; see also Myers v City of New

York, 110 AD3d 652 [1st Dept 2013] [“City’s delay in answering on behalf of the individual defendants was reasonable in that it was due to its investigation of its obligation to defend them”]).

Finally, in light of this reasonable excuse and potentially meritorious defense and “the strong public policy of this state to dispose of cases on their merits,” (HSBC USA v Lugo, 127 AD3d 502, 503 [1st Dept 2015] [internal citations omitted])—the Court grants defendants’ cross-motion to compel plaintiff to accept service of defendants’ late answer.

Accordingly, it is

**ORDERED** that plaintiff’s motion to serve a late notice of claim is granted; and it is further

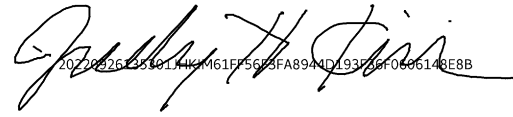
**ORDERED** that plaintiff’s Notice of Claim in the form annexed to his motion papers (NYSCEF Doc. No. 4) is deemed timely filed nunc pro tunc; and it is further

**ORDERED** that plaintiff’s motion for a default judgment against Mancilla and Garcia is denied; and it is further

**ORDERED** that defendants’ cross-motion to compel plaintiff to accept Mancilla and Garcia’s late answer is granted and the proposed answer in the form annexed to defendants’ motion papers (NYSCEF Doc. No. 39) is deemed served and filed nunc pro tunc; and it is further

**ORDERED** that counsel for defendants shall, within thirty days from the date of this decision and order, file and serve a copy of this decision and order with notice of entry upon all parties.

This constitutes the decision and order of the Court.



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9/26/2022

DATE

HON. JUDY H. KIM, 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