

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Sept

Present:

HON. JOSEPH COVELLO

Justice

**IN THE MATTER OF THE CLAIM OF
VENANCIO G. CABEL,**

**TRIAL/IAS, PART 29
NASSAU COUNTY**

Index #: 013115/2002

Petitioner

Motion Date: 09/05/02

-against-

Motion Seq. #: 001

**COUNTY OF NASSAU, HAYLEY E. LUBARSKY
and CHARLES P. HUE.**

Respondents.

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The following paper read on this motion:

Notice of Petition	1
Affirmation in Opposition	2

The petition dated August 7, 2002 and brought in the above captioned proceeding, for leave, pursuant to General Municipal Law Section 50-e(5), to serve and file a late Notice of Claim against the County of Nassau, in the form annexed to the moving papers is denied.

Generally Municipal Law Section 50-i provides in pertinent part:

“No action ... shall be prosecuted or maintained against a ... county ... for personal injury ... alleged to have been sustained by reason of the negligence or wrongful act of such ... county ..., unless, (a) a Notice of Claim shall have been made and served upon the ... county ... in compliance with section 50-e of this Chapter, ... and (c) the action ... shall be commenced within one year and ninety days after the happening of the event upon which the claim is based”

General Municipal Law Section 50-e (1)(a) provides in pertinent part:

“In any case founded upon tort where a Notice of Claim is required as a condition precedent to the commencement of an action ... against a public corporation ... the Notice of Claim shall ... be served ... within ninety days after the claim arises”

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

“Upon application, the court, in its discretion, may extend the time to serve a Notice of ClaimThe 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 or within a reasonable time thereafter. The court shall also consider ... whether the delay in serving the Notice of Claim substantially prejudiced the public corporation in maintaining its defense on the merits.”

The proposed Notice of Claim states:

“The nature of the claim: Claim of personal injury Injury occurred as a result of car hitting claimant while crossing Peninsula Blvd. at Oxford Rd.

The time when, the place where and the manner in which the claim arose: On December 11, 2001, the claimant while crossing, after school. Peninsula Blvd. at the intersection of Oxford was hit by a car driven by an unlicensed driver Hayley Lubarsky and owned by Charles Hue. Resulting head injury. County of Nassau responsible since there was a record of prior accidents at the intersection and County had a heightened responsibility with respect to duty of safety and to warn at this intersection.”

In support of the instant Petition, counsel for the Petitioner alleges:

“In short, the claimant came to your affirmant beyond the passage of the mandated 50e statutory period not knowing of or realizing the importance of timely filing of the Notice of Claim. Your affirmant was and is extremely busy and the investigator took sometime to determine who owed Peninsula Blvd.

* * *

The possibility of substantial prejudice is greatly diminished here since the facts of this case have long been known to the County of Nassau in the form of a police accident report ... and also that for one week the claimant was hospitalized and treated in the Nassau County Medical Center, the primary hospital of Nassau County.”

“In determining an application to extend the time to serve a Notice of Claim, the court should consider whether the public corporation received ‘actual knowledge of the essential facts constituting the claim’ within 90 days after the claim arose or within a reasonable time thereafter (General Municipal Law, Section 50-e, subd 5), a factor which should be accorded great weight (see, **Matter of Bearey v City of Rye**, 44 NY2d 398, 412; **Matter of Ziecker v Town of Orchard**

Park, 70 AD2d 422, affd 51 NY2d 957).” Matter of Morris v County of Suffolk, 88 AD2d 956.

“... the County of Nassau did not acquire actual knowledge of the claim by reason of police reports regarding the accident, inasmuch as such reports do not constitute notice to a municipality (see, **Matter of Dube v City of New York**, 158 AD2d 457; **Matter of Perry v City of New York**, 133 AD2d 692; **Caselli v City of New York**, 105 AD2d 251).” **Ribeiro v Town of North Hempstead**, 200 AD2d 730, 731.

Based upon all the papers submitted for this court’s consideration, the court finds and determines that the petitioner, Cabel, has not demonstrated that the respondent, County of Nassau had any notice of the subject claim prior to its receipt of the instant petition, a period of eight (8) months between the occurrence of the alleged motor vehicle accident and the filing of the instant claim. Furthermore, the petitioner does not specify or document, when counsel for the petitioner ascertained that where the accident occurred was owned and / or controlled by the County of Nassau, the alleged history and nature of prior accidents at the site, of this claim or the claimed hazard or hazards that existed at the said site.

Additionally, the Police Accident Report, upon which the petitioner relies upon to demonstrate the County’s knowledge of the subject accident, states:

“MVI collided with a pedestrian. ... Operator of MVI and witnesses ... and ... stated that the pedestrian ran in front of MVI.”

There is nothing before this court that describes the essential facts which constitute the claim against the respondent, County of Nassau, herein.

This constitutes the decision and order of the court.

This concludes this special proceeding.

Dated: October 29, 2002

ENTERED


JOSEPH COVELLO, J. S. C.

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NASSAU COUNTY
COUNTY CLERK'S OFFICE