

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
In the Matter of the Claim of JUNIOR BISHOP,

Petitioner,

-against-

THE CITY OF NEW YORK and NEW YORK CITY POLICE
DEPARTMENT,Respondents.
-----X

Index No.

ATTORNEY
VERIFIED
PETITION IN
SUPPORT

James J. Franzetti, an attorney duly admitted to practice law in the State of New York, affirms the following under the penalties of perjury:

1. I am the principal of FRANZETTI LAW OFFICES, P.C., counsel for the petitioner JUNIOR BISHOP, and am fully familiar with the facts and circumstances of this case based on my handling of the file.

2. The petitioner Junior Bishop seeks an Order pursuant to General Municipal Law Section 50-e(5), permitting him to serve and file a late Notice of Claim (annexed as Exhibit "A") regarding the false arrest and false imprisonment which occurred on July 26, 2014, and the subsequent malicious prosecution which terminated on February 3, 2015, against THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT; and for such other, further, and different relief as may be just and proper.

3. The petitioner Junior Bishop was arrested on July 26, 2014 on the sidewalk in front of 1472 Broadway, New York, N.Y. Pursuant to his Notice of Claim and affidavit annexed as Exhibits "A" and "B" respectively, at approximately 1:45 PM on July 26, 2014, he, without cause, was approached by NYPD police officers. See id. He was in costume as Spiderman posing with pedestrians for photographs, and was working for tips only. See id. He does not charge people to take photographs and was not doing so at the time of the incident. See id. He was

approached by a police officer who grabbed him from behind by the collar for no reason. An extremely brief altercation ensued before he realized what was going on, that a police officer was involved, and he therefore submitted to a wrongful arrest (Arrest #M14681247). See id. At the time he was approached by the police, he was doing nothing except being lawfully present at the situs as one of many character actors which are a great attraction at Times Square. Bishop was taken to the Midtown South Precinct, where he was fingerprinted, and was then moved to Central Booking for further processing. See id. He was then arraigned and incarcerated, and not released from The Tombs until July 31, 2014. See id.

4. A prosecution ensued under docket number 2014NY069990, and the case against him was dismissed on February 3, 2015. The Notice of Claim annexed as Exhibit “A” is timely as to the malicious prosecution claim, however, the Notice of Claim is not timely as to the false arrest and false imprisonment (and applicable civil rights violations). Hence this motion is made prior to serving said Notice of Claim in order to preserve the foregoing claims.

5. Using the applicable accrual dates (October 26, 2014 and May 3, 2015), the petitioner had until approximately October 26, 2014 to serve a Notice of Claim as to the false arrest and false imprisonment causes of action, and he has until approximately May 3, 2015 to serve a Notice of Claim as to the malicious prosecution cause of action. The petitioner’s Notice of Claim, while timely as to the malicious prosecution cause of action, is approximately 6 months late [as of the filing of this motion] with regards to the false arrest and false imprisonment causes of action. The statute of limitations to serve a Summons and Complaint on the City of New York as to the false arrest and false imprisonment claims runs on approximately October 26, 2014.

6. Mr. Bishop files this motion for leave to serve a late Notice of Claim seeking to

preserve his claims for false arrest and false imprisonment against the City of New York and New York City Police Department.

7. The petitioner's excuse as to why he was unable to file a timely notice of claim is that he was caring for a sick grandmother (with diabetes and asthma), an extremely sick cousin who had undergone a kidney surgery, and also caring for his mother who suffers from a drug addiction. See Exhibit "B" It is respectfully suggested that this excuse is reasonable.

8. Municipal Law Section 50-e(5), in relevant part, states, "Upon application, the court, in its discretion may extend the time to serve a notice of claim....The 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....and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits. Municipal Law Section 50-e(5).

9. **The case law, as cited below, is overwhelmingly in favor of the petitioner in the instant case as he seeks to demonstrate that the City of New York had actual notice of the essential facts constituting his false arrest and false imprisonment claims and that there would be no prejudice to the City were the Court to grant this petition.**

10. In Matter of Ragland v. NYCHA, 201 A.D.2d 7, 613 N.Y.S.2d 7, 613 N.Y.S.2d 937 (2d Dep't 1994), it was held that, as a matter of law, a municipal defendant has actual knowledge of an incident "when it is the acts of the police which give rise to the very claim set forth in the proposed notice" and the police create reports of the incident for their records. See also, Tatum v. City of New York, 161 A.D.2d 580, 555 N.Y.S.2d 158 (2d Dep't 1990)(false

imprisonment, malicious prosecution); McKenna v. City of New York, 254 A.D.2d 655, 154 A.D.2d 655 (2d Dep't 1989)(false arrest and imprisonment); Montalto v. Town of Harrison, 151 A.D.2d 652, 543 N.Y.S.2d 97 (2d Dep't 1989)(false arrest and imprisonment, malicious prosecution); Matter of Reisse v. County of Nassau, 141 A.D.2d 649, 529 N.Y.S.2d 37 (2d Dep't 1988)(false arrest and imprisonment, malicious prosecution, violation of civil rights); Schiffman v. City of New York, 19 A.D.3d 206, 797 N.Y.S.2d 450 (1st Dep't 2005)(City acquired essential notice of the essential facts based upon the facts that police were directly involved in all aspects of the claims emanating from the death of petitioner's decedent); Boskin v. New York City Transit Authority, 843 N.Y.S.2d 454 (2d Dep't 2007); Nunez v. City of New York, 307 A.D.2d 218 716 N.Y.S.2d 384 (1st Dep't 2003).

11. There is actual knowledge in that the acts of the police in this case gave rise to Daniel's claims for false arrest and false imprisonment (and concomitant civil rights violations) and that therefore the police officers, as the City's employees, had immediate knowledge of the events giving rise to the claim. See generally Diallo v. City of New York, 224 A.D.2d 339, 340, 638 N.Y.S.2d 58 (1st Dep't 1996). The City should also be foreclosed from claiming prejudice where the police have all of the investigative records pertaining to this matter in their files.

12. **Moreover, the First Department case of Grullon v. City of New York, 222 A.D.2d 257 (1st Dep't 1995) is nearly identical the case at bar.** In Grullon, the City conceded that the claim for malicious prosecution was timely, since such a cause of action accrues on the date the charges are dismissed. Id. The Court stated, "As to the causes of action for false arrest and false imprisonment, under the circumstances of this case, where the police department conducted an extensive investigation in which the District Attorney's Office joined, knowledge of the essential facts constituting the claims within the statutory period can be imputed to the

City. Id. Therefore, the City cannot claim that it was prejudiced by the delay. See Id. In this case, similarly, there was a full investigation and prosecution of Belizaire. The City cannot claim prejudice or lack of knowledge of the essential facts constituting his claim.

13. For the foregoing reasons, the petitioner's request for leave to serve and file a late Notice of Claim for damages resulting from the July 26, 2014 false arrest and false imprisonment.

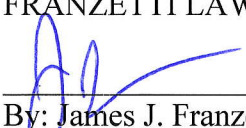
14. No prior application for the relief requested herein has been made to this Court.

WHEREFORE, your Affirmant respectfully requests that the petitioner's application be granted in its entirety and that an Order be issued pursuant to General Municipal Law Section 50-e(5), permitting the petitioner JUNIOR BISHOP to serve and file a late Notice of Claim (annexed as Exhibit "A") regarding his false arrest and false imprisonment which occurred on July 26, 2014, and the subsequent malicious prosecution against THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT, and for further and different relief as may be just and proper.

Dated: New York, New York
April 9, 2015

Respectfully submitted,

FRANZETTI LAW OFFICES, P.C.



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ATTORNEY VERIFICATION

State of New York }
 } SS:
County of New York }

I, the undersigned, an attorney admitted to practice in the courts of the State of New York, state that I am the attorney of record for the plaintiff in the within action. I have read the foregoing

NOTICE OF PETITION AND AFFIRMATION IN SUPPORT

in the within action and know the contents thereof, the same are true to my knowledge except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. The reason this verification is made by my and not by the plaintiff is that the plaintiff is not presently in the county where I, the attorney for the plaintiff, maintain my office.

The grounds of my belief as to those matters therein not stated upon knowledge is based upon facts, records, and other pertinent information contained in my files.

DATED: New York, New York
 April 9, 2015



JAMES J. FRANZETTI