

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Henriquez v. New York City Hous. Auth.

Henriquez, 2026 NY Slip Op 02782 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 21718/18; Appeal No. 6527; Case No. 2025-00167 · Decided May 5, 2026

SUMMARY

The Appellate Division, First Department modified an order concerning a negligence action against the New York City Housing Authority arising from smoke inhalation injuries at a NYCHA-owned building. The court granted NYCHA's motion to strike allegations in supplemental bills of particulars because they presented new theories of liability not fairly implied by the notice of claim. It otherwise affirmed the denial of plaintiff's motion to amend the notice of claim and complaint.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Webber, J.P.; Moulton, J.; Mendez, J.; Higgitt, J.; Michael, J.                                                                                                                                                                                                                                         |
| JURISDICTION          | New York Appellate Division, First Department                                                                                                                                                                                                                                                           |
| DECIDED               | May 5, 2026                                                                                                                                                                                                                                                                                             |
| DOCKET                | Index No. 21718/18; Appeal No. 6527; Case No. 2025-00167                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Appeal from an order of Supreme Court, Bronx County, denying NYCHA's motion to strike additional claims in supplemental bills of particulars and denying plaintiff's motion to amend the notice of claim and complaint.                                                                                 |
| STANDARD OF REVIEW    | The court reviewed the appeal under the proper standard based on the record and reviewed the order for errors of law, including whether the supplemental claims were new theories of liability rather than permissible amplification and whether amendment was authorized under the governing statutes. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                               |
| PARTIES               | New York City Housing Authority, Antoinette Henriquez v. Antoinette Henriquez, New York City Housing Authority                                                                                                                                                                                          |

## TOPICS

motion to amend   civil procedure   appellate procedure   municipal law   negligence

## PRACTICE AREAS

civil procedure   municipal law   torts   appellate procedure

## QUESTIONS PRESENTED

1. Whether NYCHA's motion should be treated as a motion under CPLR 3043(b) despite the notice of motion incorrectly citing CPLR 3211.
2. Whether the supplemental allegations concerning the absence of fire alarms and sprinklers were fairly implied by the notice of claim or instead constituted new, distinct, and independent theories of liability.
3. Whether plaintiff could rely on testimony at her General Municipal Law § 50-h hearing to cure deficiencies in the notice of claim.
4. Whether plaintiff could amend the notice of claim and complaint under General Municipal Law § 50-e(6) and CPLR 3025(b) to add the new theories after expiration of the limitations period.
5. Whether plaintiff could seek leave to file a late notice of claim after expiration of the one-year-and-90-day limitation period.

## HOLDINGS

1. A court may disregard the technical error in a notice of motion citing the wrong procedural provision and treat the motion under CPLR 3043(b) where the notice and supporting papers clearly identify the relief and grounds sought and the opposing party suffers no prejudice.
2. Allegations that NYCHA failed to provide fire alarms or sprinklers and violated related fire, administrative, and penal provisions were new, distinct, and independent theories of liability, not matters fairly implied by or merely amplifying the original notice of claim; those allegations were properly stricken.
3. Leave to amend was properly denied because the proposed amendments asserted new theories of liability not contained in the notice of claim, and plaintiff could not seek leave to file a late notice of claim after expiration of the one-year-and-90-day limitation period.

## KEY QUOTATIONS

*“Rather, the new allegations go beyond mere amplification and are new, distinct and independent theories of liability”* ([\*2])

*“Although leave to amend a pleading under CPLR 3025(b) shall be freely given, a complaint may not allege causes of action not alleged in the notice of claim”* ([\*2])

## FACTUAL BACKGROUND

On August 5, 2017, Antoinette Henriquez, an on-duty NYPD sergeant, was seriously injured by inhaling heavy smoke at a NYCHA-owned building after third-party defendant Lorenzo Simmons allegedly started a fire in an apartment. Henriquez timely filed a notice of claim primarily alleging that NYCHA negligently permitted an illegal generator in the apartment. After the limitations period expired, she served supplemental bills of particulars alleging that NYCHA failed to provide fire alarms or sprinklers and violated provisions of the New York City Fire Code, Fire Prevention Code, Administrative Code, and Penal Law.

**PROCEDURAL HISTORY**

Plaintiff sued NYCHA after sustaining smoke-inhalation injuries at a NYCHA-owned building. Her original notice of claim primarily alleged negligence based on NYCHA's permitting an illegal generator. After the applicable limitations period expired, she served supplemental bills of particulars asserting additional theories involving the absence of fire alarms and sprinklers and sought to amend the notice of claim and complaint. Supreme Court denied both motions. The Appellate Division modified the order to grant NYCHA's motion to strike and otherwise affirmed.

**DISPOSITION**

affirmed

**CASES CITED**

- Ricciardi v. State of New York, 201 A.D.3d 577, 578 (1st Dep't 2022), leave denied, 38 N.Y.3d 914 (2022)
- Matter of Blauman-Spindler v. Blauman, 68 A.D.3d 1105, 1106 (2d Dep't 2009)
- Blainey v. Metro N. Commuter R.R., 99 A.D.3d 588, 590 n. 2 (1st Dep't 2012), leave denied, 21 N.Y.3d 859 (2013)
- Chan v. City of New York, 238 A.D.3d 446, 446 (1st Dep't 2025)
- Lewis v. New York City Hous. Auth., 135 A.D.3d 444, 444-445 (1st Dep't 2016)
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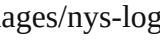
**OPINION**

Henriquez v. New York City Hous. Auth. 2026 NY Slip Op 02782

PER CURIAM.

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2026 NY Slip Op 02782  
May 5, 2026  
Appellate Division, First Department  
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.  
This decision is uncorrected and subject to revision before publication in the Official Reports.

Antoinette Henriquez, Plaintiff-Respondent-Appellant,  
v  
New York City Housing Authority, Defendant-Appellant-Respondent. And a Third-Party Action

Decided and Entered: May 05, 2026  
Index No. 21718/18|Appeal No. 6527|Case No. 2025-00167|  
Before: Webber, J.P., Moulton, Mendez, Higgitt, Michael, JJ.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Patrick J. Lawless of counsel), for appellant-respondent.  
DeColator, Cohen & DiPrisco, LLP, Garden City (Carolyn M. Canzoneri of counsel), for respondent-appellant.

Order, Supreme Court, Bronx County (Paul L. Alpert, J.), entered December 24, 2024, which denied defendant New York City Housing Authority's (NYCHA) motion to strike the additional claims in the verified supplemental bills of particulars dated September 16, 2020 and October 17, 2023, and denied plaintiff's motion to amend the notice of claim and complaint, unanimously modified, on the law, to grant NYCHA's motion, and otherwise affirmed, without costs.

Plaintiff alleges that, on August 5, 2017, while working as an on-duty sergeant employed by nonparty NYPD, she was seriously injured from the inhalation of heavy smoke at a NYCHA-owned building when third-party defendant Lorenzo Simmons allegedly started a fire inside an apartment. Plaintiff timely filed a notice of claim primarily alleging that NYCHA was negligent in permitting an illegal generator in the subject apartment. After the statute of limitations expired, plaintiff served supplemental bills of particulars, alleging that NYCHA was negligent and violated certain provisions of the New York City Fire Code, the Fire Prevention Code, the Administrative Code, and the Penal Law by failing to provide a fire alarm or fire sprinkler system for the premises.

Supreme Court should not have denied NYCHA's motion to strike claims in the supplemental bills of particulars for failing to specify the relief demanded (*see* CPLR 2214[a]). Although NYCHA erroneously asserted in its notice of motion that it was seeking relief pursuant to CPLR 3211, the court should have disregarded this technical deficiency because the notice of motion and affirmation made clear that it sought to strike claims in the bills of particulars that were not alleged in the notice of claim (*see* CPLR 2001; *Ricciardi v State of New York*, 201 AD3d 577, 578 [1st Dept 2022], *lv denied* 38 NY3d 914 [2022]). The court should have treated the motion as one made pursuant to CPLR 3043(b), as there was no prejudice to plaintiff, who was adequately apprised of the relief sought and the grounds therefor (*see* *Matter of Blauman-Spindler v Blauman*, 68 AD3d 1105, 1106 [2d Dept 2009]). Further, this appeal may be reviewed under the proper standard based on the record (*see* *Blainey v Metro N. Commuter R.R.*,

99 AD3d 588, 590 n 2 [1st Dept 2012], *lv denied* 21 NY3d 859 [2013]).

On the merits, NYCHA's motion to strike should be granted. The new allegations cannot be fairly implied from the boilerplate statements contained in the notice of claim, including the "failure to warn" allegations (*see Chan v City of New York*, 238 AD3d 446, 446 [1st Dept 2025]; *Lewis v New York City Hous. Auth.*, 135 AD3d 444, 444-445 [1st Dept 2016]). Rather, the new allegations go beyond mere amplification and are new, distinct and independent theories of liability (*see Lopez v New York City Hous. Auth.*, 16 AD3d 164, 165 [1st Dept 2005]). Plaintiff may not rely on her testimony at her General Municipal Law § 50-h hearing to rectify any deficiencies in the notice of claim (*see Scott v City of New York*, 40 AD3d 408, 410 [1st Dept 2007]).

Supreme Court providently denied plaintiff leave to amend the complaint. Since NYCHA's moving papers established that plaintiff's proposed amendments constituted new theories of liability, amendment is not permitted pursuant to General Municipal Law § 50-e(6) (*see Ebron v New York City Hous. Auth.*, 177 AD3d 530, 530 [1st Dept 2019]). The issue of whether NYCHA would be prejudiced by the amendment is irrelevant (*see Wilson v City of New York*, 195 AD3d 534, 534 [1st Dept 2021]). Although leave to amend a pleading under CPLR 3025(b) shall be freely given, a complaint may not allege causes of action not alleged in the notice of claim (*see Cruz v City of New York*, 135 AD3d 644, 644-645 [1st Dept 2016]). Plaintiff may not seek leave to file a late notice of claim because the applicable one-year-and-90-day limitation period has expired (*see Public Housing Law § 157[2]; General Municipal Law §§ 50-e[1]; 50-i[1][c]*).

We have considered the remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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PER CURIAM.

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providently denied plaintiff leave to amend the complaint. Since NYCHA's moving papers established that plaintiff's proposed amendments constituted new theories of liability, amendment is not permitted pursuant to General Municipal Law § 50-e(6) ( see *Ebron v New York City Hous. Auth.* , 177 AD3d 530 , 530 [1st Dept 2019]). The issue of whether NYCHA would be prejudiced by the amendment is irrelevant ( see *Wilson v City of New York* , 195 AD3d 534, 534 [1st Dept 2021]). Although leave to amend a pleading under CPLR 3025(b) shall be freely given, a complaint may not allege causes of action not alleged in the notice of claim ( see *Cruz v City of New York* , 135 AD3d 644, 644-645 [1st Dept 2016]). Plaintiff may not seek leave to file a late notice of claim because the applicable one-year-and-90-day limitation period has expired ( see Public Housing Law § 157[2]; General Municipal Law §§ 50-e[1]; 50-i[1][c]). We have considered the remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 5, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

PER CURIAM.

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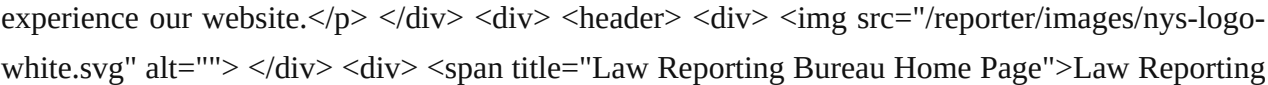
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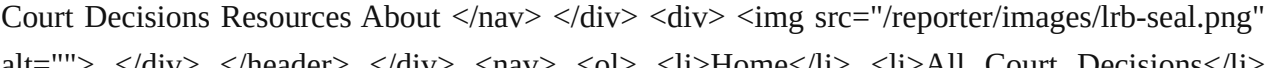
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Index No. 21718/18|Appeal No. 6527|Case No. 2025-00167|

Before: Webber, J.P., Moulton, Mendez, Higgitt, Michael, JJ.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Patrick J. Lawless of counsel), for appellant-respondent.

DeColator, Cohen & DiPrisco, LLP, Garden City (Carolyn M. Canzoneri of counsel), for respondent-appellant.

Order, Supreme Court, Bronx County (Paul L. Alpert, J.), entered December 24, 2024, which denied defendant New York City Housing Authority's (NYCHA) motion to strike the additional claims in the verified supplemental bills of particulars dated September 16, 2020 and October 17, 2023, and denied plaintiff's motion to amend the notice of claim and complaint, unanimously modified, on the law, to grant NYCHA's

motion, and otherwise affirmed, without costs.

Plaintiff alleges that, on August 5, 2017, while working as an on-duty sergeant employed by nonparty NYPD, she was seriously injured from the inhalation of heavy smoke at a NYCHA-owned building when third-party defendant Lorenzo Simmons allegedly started a fire inside an apartment. Plaintiff timely filed a notice of claim primarily alleging that NYCHA was negligent in permitting an illegal generator in the subject apartment. After the statute of limitations expired, plaintiff served supplemental bills of particulars, alleging that NYCHA was negligent and violated certain provisions of the New York City Fire Code, the Fire Prevention Code, the Administrative Code, and the Penal Law by failing to provide a fire alarm or fire sprinkler system for the premises.

Supreme Court should not have denied NYCHA's motion to strike claims in the supplemental bills of particulars for failing to specify the relief demanded (*see* CPLR 2214[a]). Although NYCHA erroneously asserted in its notice of motion that it was seeking relief pursuant to CPLR 3211, the court should have disregarded this technical deficiency because the notice of motion and affirmation made clear that it sought to strike claims in the bills of particulars that were not alleged in the notice of claim (*see* CPLR 2001; *Ricciardi v State of New York*, 201 AD3d 577, 578 [1st Dept 2022], *lv denied* 38 NY3d 914 [2022]). The court should have treated the motion as one made pursuant to CPLR 3043(b), as there was no prejudice to plaintiff, who was adequately apprised of the relief sought and the grounds therefor (*see* *Matter of Blauman-Spindler v Blauman*, 68 AD3d 1105, 1106 [2d Dept 2009]). Further, this appeal may be reviewed under the proper standard based on the record (*see* *Blainey v Metro N. Commuter R.R.*, 99 AD3d 588, 590 n 2 [1st Dept 2012], *lv denied* 21 NY3d 859 [2013]).

On the merits, NYCHA's motion to strike should be granted. The new allegations cannot be fairly implied from the boilerplate statements contained in the notice of claim, including the "failure to warn" allegations (*see* *Chan v City of New York*, 238 AD3d 446, 446 [1st Dept 2025]; *Lewis v New York City Hous. Auth.*, 135 AD3d 444, 444-445 [1st Dept 2016]). Rather, the new allegations go beyond mere amplification and are new, distinct and independent theories of liability (*see* *Lopez v New York City Hous. Auth.*, 16 AD3d 164, 165 [1st Dept 2005]). Plaintiff may not rely on her testimony at her General Municipal Law § 50-h hearing to rectify any deficiencies in the notice of claim (*see* *Scott v City of New York*, 40 AD3d 408, 410 [1st Dept 2007]).

Supreme Court providently denied plaintiff leave to amend the complaint. Since NYCHA's moving papers established that plaintiff's proposed amendments constituted new theories of liability, amendment is not permitted pursuant to General Municipal Law § 50-e(6) (*see* *Ebron v New York City Hous. Auth.*, 177 AD3d 530, 530 [1st Dept 2019]). The issue of whether NYCHA would be prejudiced by the amendment is irrelevant (*see* *Wilson v City of New York*, 195 AD3d 534, 534 [1st Dept 2021]). Although leave to amend a pleading under CPLR 3025(b) shall be freely given, a complaint may not allege causes of action not alleged in the notice of claim (*see* *Cruz v City of New York*, 135 AD3d 644, 644-645 [1st Dept 2016]). Plaintiff may not seek leave to file a late notice of claim

because the applicable one-year-and-90-day limitation period has expired (*see* Public Housing Law § 157[2]; General Municipal Law §§ 50-e[1]; 50-i[1][c]).

We have considered the remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 5, 2026

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