

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Corr v Nassau BOCES

2026 NY Slip Op 01508 · No. 2024-06147 · Decided March 18, 2026

SUMMARY

The Appellate Division, Second Department affirmed the denial of a petition for leave to serve a late notice of claim against Nassau BOCES under General Municipal Law § 50-e(5). The court held that the petitioner offered no reasonable excuse for the delay, Nassau BOCES lacked timely actual knowledge of the essential facts constituting the claim, and the petitioner failed to show that the delay would not substantially prejudice the respondent.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	New York Appellate Division, Second Department
DECIDED	March 18, 2026
DOCKET	2024-06147
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying a petition for leave to serve a late notice of claim and, in effect, dismissing the proceeding.
STANDARD OF REVIEW	Whether the Supreme Court providently exercised its discretion in denying leave to serve a late notice of claim.
PRECEDENTIAL VALUE	published
PARTIES	Michael Corr v. Nassau BOCES

TOPICS

- municipal law
- civil procedure
- appellate procedure
- remedies
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the petitioner established grounds under General Municipal Law § 50-e(5) for leave to serve a late notice of claim.
2. Whether the Supreme Court providently exercised its discretion in denying the petition and effectively dismissing the proceeding.

HOLDINGS

1. Leave to serve a late notice of claim was properly denied because the petitioner offered no reasonable excuse for the delay, failed to establish that Nassau BOCES acquired timely actual knowledge of the essential facts constituting the claim, and failed to meet his initial burden of showing that the delay would not substantially prejudice Nassau BOCES.

KEY QUOTATIONS

"Neither the presence nor absence of any one factor is determinative, although it is generally recognized that the question of whether the municipality timely acquired actual knowledge is of great importance"

FACTUAL BACKGROUND

On April 13, 2022, Michael Corr allegedly was injured when the vehicle he was operating was struck by a vehicle owned by Nassau BOCES and operated by Eric Falkenstrom. Corr did not timely serve a notice of claim within 90 days. He served a notice of claim on May 4, 2023 and then sought leave to serve it late, but failed to provide an excuse for the delay, failed to show that Nassau BOCES timely acquired actual knowledge that he had sustained serious injuries caused by its employee's negligence, and failed to meet his initial burden of showing that the delay would not substantially prejudice Nassau BOCES.

PROCEDURAL HISTORY

The petitioner allegedly suffered injuries in an April 13, 2022 motor-vehicle accident involving a vehicle owned by Nassau BOCES. He served a notice of claim on May 4, 2023 and commenced a General Municipal Law § 50-e(5) proceeding on May 8, 2023 seeking leave to serve a late notice of claim. The Supreme Court, Nassau County, denied the petition and effectively dismissed the proceeding; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Ippolito v City of New York, 230 AD3d 683, 683-684
- Matter of Simpson v City of New York, 222 AD3d 986, 986
- Matter of C.N. v City of New York, 208 AD3d 784, 785

- Matter of Roman v New York City Hous. Auth., 212 AD3d 816, 818
- Matter of Grandberry v City of New York, 206 AD3d 654, 655-656
- Matter of Molme v New York City Tr. Auth., 177 AD3d 601, 602
- Matter of Harding v Yonkers Cent. Sch. Dist., 170 AD3d 725, 726
- Matter of Charles v County of Orange, N.Y., 164 AD3d 1232, 1233
- Matter of Ramos v Board of Educ. of the City of N.Y., 148 AD3d 909, 912
- Matter of Anderson v City of New York, 237 AD3d 927, 928

OPINION

PER CURIAM.

Matter of Corr v Nassau BOCES (2026 NY Slip Op 01508) Matter of Corr v Nassau BOCES 2026 NY Slip Op 01508 Decided on March 18, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

WILLIAM G. FORD HELEN VOUTSINAS LAURENCE L. LOVE, JJ. 2024-06147 (Index No. 607577/23) [*1]In the Matter of Michael Corr, appellant, v Nassau BOCES, respondent. Parker Waichman LLP (Law Office of Arnold E. DiJoseph, P.C., New York, NY [Arnold E. DiJoseph III], of counsel), for appellant. Congdon, Flaherty, O'Callaghan, Fishlinger & Pavlides, Uniondale, NY (Kathleen D. Foley of counsel), for respondent.

DECISION & ORDER In a proceeding pursuant to General Municipal Law § 50-e(5), inter alia, for leave to serve a late notice of claim, the petitioner appeals from an order of the Supreme Court, Nassau County (Danielle M. Peterson, J.), dated March 21, 2024.

The order denied the petition and, in effect, dismissed the proceeding. ORDERED that the order is affirmed, with costs. On April 13, 2022, the petitioner allegedly was injured when a vehicle he was operating was struck by a vehicle owned by the respondent, Nassau BOCES, and operated by nonparty Eric Falkenstrom.

On May 4, 2023, the petitioner served a notice of claim upon Nassau BOCES, and thereafter on May 8, 2023, the petitioner commenced this proceeding pursuant to General Municipal Law § 50-e(5), inter alia, for leave to serve a late notice of claim upon the respondent.

In an order dated March 21, 2024, the Supreme Court denied the petition and, in effect, dismissed the proceeding. The petitioner appeals. "In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding

against a public corporation,... the notice of claim shall comply with and be served... within ninety days after the claim arises" (General Municipal Law § 50-e[1][a]).

"In determining whether to grant leave to serve a late notice of claim, the court must consider all relevant circumstances, including whether (1) the claimant demonstrated a reasonable excuse for the failure to timely serve the notice, (2) the municipal entity acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and (3) the delay in seeking leave would substantially prejudice the municipal entity in its ability to defend against the action" (*Matter of Ippolito v City of New York*, 230 AD3d 683, 683-684 [internal quotation marks omitted]; see *Matter of Simpson v City of New York*, 222 AD3d 986, 986). "Neither the presence nor absence of any one factor is determinative, although it is generally recognized that the question of whether the municipality timely acquired actual knowledge is of great importance" (*Matter of Ippolito v City of New York*, 230 AD3d at 684, quoting *Matter of C.N. v City of New York*, 208 AD3d 784, 785; see *Matter of Roman v New York City Hous.*

Auth., 212 AD3d 816, 818). Here, the petitioner failed to assert any excuse for his failure to serve a timely notice of claim and the delay in commencing this proceeding (see *Matter of Grandberry v City of New York*, 206 AD3d 654, 655-656; *Matter of Molme v New York City Tr. Auth.*, 177 AD3d 601, 602).

Moreover, the respondent did not acquire timely, actual knowledge of the essential facts constituting the claim that the petitioner had sustained serious injuries as a result of the negligence of the respondent's employee (see *Matter of Grandberry v City of New York*, 206 AD3d at 655; *Matter of Molme v New York City Tr. Auth.*, 177 AD3d at 602; *Matter of Harding v Yonkers Cent.*

Sch. Dist., 170 AD3d 725, 726). Despite Falkenstrom's participation in the accident, the petitioner failed to demonstrate that Falkenstrom or any other employee of the respondent had knowledge that the petitioner had sustained any injury from the accident.

Accordingly, the respondent had no reason to conduct a prompt investigation into the accident (see *Matter of Grandberry v City of New York*, 206 AD3d at 655; *Matter of Charles v County of Orange, N.Y.*, 164 AD3d 1232, 1233; *Matter of Ramos v Board of Educ. of the City of N.Y.*, 148 AD3d 909, 912).

Finally, the petitioner failed to meet his initial burden of demonstrating that the respondent would not be substantially prejudiced in maintaining a defense on the merits as a result of the delay (see *Matter of Anderson v City of New York*, 237 AD3d 927, 928; *Matter of Molme v New York City Tr. Auth.*, 177 AD3d at 602).

Accordingly, the Supreme Court providently exercised its discretion in denying the petition and, in effect, dismissing the proceeding. BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and

LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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