

State of New York

Court of Appeals

*Decided and Entered on the
twenty-fifth day of November, 2019*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2019-731

Dervanna H.A. Troy-McKoy,
Appellant,

v.

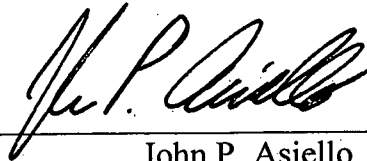
City of New York Parks and Recreation
Department,
Respondent.

Appellant having moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court



*State of New York
Court of Appeals*

*John P. Asiello
Chief Clerk and
Legal Counsel to the Court*

July 26, 2019

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

Dervanna H. A. Troy-McKoy
6505 Winfield Boulevard
Apt. B11
Margate, FL 33063

Re: Troy-McKoy v CNY Parks and Recreation
Mo. No. 2019-731

Dear Mr. Troy-McKoy:

I acknowledge receipt of your motion for leave to appeal in the above matter.
Your motion will be submitted to the Court on August 5, 2019.

Any opposing papers from respondents must be served and received by this office
no later than August 5, 2019.

On or before the return date of the motion, you must provide:

One copy of the respondent's Appellate Division brief
(Rule 500.22[c]).

If you have any questions about this Court's Rules for motions, you may call this
office at (518) 455-7705.

Very truly yours,

Rachael M. MacVean
Chief Motion Clerk

RMM:mg

cc: Susan Paulson, Esq.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 4, 2019.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
Troy K. Webber
Ellen Gesmer
Anil C. Singh, Justices.

-----X
Dervanna H. A. Troy-McKoy,

Plaintiff-Appellant,

-against-

M-1714
Index No. 652456/16

City of New York Parks and
Recreational Department,

Defendant-Respondent.
-----X

Plaintiff-appellant, pro se, having moved for leave to appeal to the Court of Appeals from the decision and order of this Court, entered on March 19, 2019 (Appeal No. 8737),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED:


CLERK

Sweeny, J.P., Webber, Gesmer, Singh, JJ.

8737 Dervanna H. A. Troy-McKoy,
Plaintiff-Appellant,

Index 652456/16

-against-

City of New York Parks and
Recreation Department,
Defendant-Respondent.

Dervanna H. A. Troy-McKoy, appellant pro se.

Zachary W. Carter, Corporation Counsel, New York (Susan Paulson
of counsel), for respondent.

Order, Supreme Court, New York County (Alexander M. Tisch,
J.), entered June 6, 2018, which granted defendant's motion to
dismiss the amended complaint, unanimously affirmed, without
costs.

Plaintiff's defamation claims were barred because he did not
timely file a notice of claim within 90 days of the July 8, 2011
notice from nonparty Department of Labor denying his application
for unemployment benefits based upon the allegedly defamatory
information provided by respondent (see General Municipal Law
(GML) § 50-e[1][a]). Plaintiff did not seek leave to file a late
notice of claim within one-year and 90 days from the date his
claims accrued (see *Pierson v City of New York*, 56 NY2d 950, 954-
955 [1982]; *Turner v City of New York*, 94 AD3d 635 [1st Dept
2012]). That plaintiff ultimately served a notice of claim upon

defendant in September 2013 is of no moment, because it was served well after the statute of limitations had expired (see GML 50-e[1], [5]; GML 50-I; *Matter of Pipitone v City of New York*, 38 AD3d 557 [2d Dept 2007], lv denied 9 NY3d 810 [2007]).

We have considered plaintiff's remaining contentions, including that defendant interfered with his ability to timely file a notice of claim or seek leave to file a late notice within the applicable statute of limitations, and find them unavailing.

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

ENTERED: MARCH 19, 2019


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on August 23, 2018.

Present - Hon. Judith J. Gische, Justice Presiding,
Troy K. Webber
Jeffrey K. Oing
Anil C. Singh
Peter H. Moulton, Justices.

-----X
Dervanna H.A. Troy-McKoy,
Petitioner-Appellant,

-against-

M-3220
Index No. 652456/16

City of New York Department of Parks
and Recreation,
Respondent-Respondent.
-----X

Petitioner, pro se, having moved for leave to prosecute, as a poor person, the appeal from an order of the Supreme Court, New York County, entered on or about June 6, 2018, and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon,

It is ordered that said motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serve one copy of such brief upon the attorney for respondent and file 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTERED:


DEPUTY CLERK

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH
Justice

PART 52

Index Number : 652456/2016
TROY-MCKOY, DERVANNA H.A
vs
CITY OF NEW YORK PARKS AND
Sequence Number : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1
Answering Affidavits — Exhibits _____ No(s) 2
Replying Affidavits _____ No(s) 3

Upon the foregoing papers, it is ordered that this motion is granted

The respondent moves to dismiss plaintiff's claim pursuant to CPLR 3211(a)(5). Plaintiff asserts that he received notice on or about July 8, 2011 that his application for unemployment benefits was denied subsequent to his termination from his temporary position with the respondent, which he alleges was based on defamatory information provided to the New York State Department of Labor by the respondent. The respondent correctly asserts that the plaintiff failed to serve a timely notice of claim within ninety days of the alleged defamation as required by GML § 50-e[1][a]; 50-i[1]. Moreover, pursuant to GML § 50-e[5] the statute of limitations is one year and ninety days for a municipal tort and the notice of claim and this cause of action were served outside that limitation. The court "may extend the time to serve a notice of claim" but such "extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation"; *Pierson v New York*, 56 NY2d 950 [1982]; *Turner v City of New York*, 94 AD3d 635 [1st Dept 2012]).

Accordingly, it is hereby ORDERED that the motion is granted and the proceeding is dismissed. This shall constitute the decision and order of the Court.

Dated: June 4, 2018



HON. ALEXANDER M. TISCH, J.S.C.

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**Additional material
from this filing is
available in the
Clerk's Office.**