

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE IAS PART 22  
Justice

-----	Index No. 23509/06
MILDRED KRALJIC,	Motion
Petitioner,	Date March 6, 2007
-against-	
	Motion
METROPOLITAN TRANSPORTATION	Cal. No. 3
AUTHORITY and NEW YORK CITY TRANSIT	
AUTHORITY,	Motion
Respondents.	Sequence No. S001
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The following papers numbered 1 to 8 read on this order to show cause by petitioner for leave to serve a late Notice of Claim pursuant to General Municipal Law § 50-e(5).

	<u>PAPERS NUMBERED</u>
Order to Show Cause-Affidavits-Exhibits....	1-5
Affirmation in Opposition.....	6-8

Upon the foregoing papers it is ordered that this application is determined as follows:

Petitioner's application for leave to serve a late Notice of Claim is granted (see General Municipal Law § 50-e[1][a]). It is within the Court's discretion to extend the time to serve a Notice of Claim (*In the Matter of Nahema Canty v. City of New York*, 273 AD2d 467 [2d Dept 2000]). "The key factors to be considered in determining whether to grant an application to serve a late Notice of Claim are whether the [governmental unit or its attorneys or its insurance carrier] acquired actual knowledge of the essential facts of the claim within the statutory 90-day period, whether the petitioners had a reasonable excuse for the delay, and whether the delay would substantially prejudice the [governmental unit or its attorneys or its insurance carrier] in its defense on the merits." (*Matter of "Jane Doe" v. Hicksville Union Free School District*, 24 AD3d 666 [2d Dept 2005]; General Municipal Law §50-e[5]; *Fox v. City of New York*, 91 AD2d 624 [2d Dept 1982]).

In the underlying action, petitioner, Mildred Kraljic seeks to recover from respondents, Metropolitan Transit Authority ("MTA") and New York City Transit Authority ("NYCTA") for personal injuries suffered as a result of an accident occurring on July 13, 2006 in Long Island City, New York, where petitioner was a passenger aboard a Q101 bus, allegedly owned by respondents. Petitioner alleges that while aboard the bus, she was caused to fall due to an abrupt movement of the bus. Pursuant to General Municipal Law §50-e, petitioner's time to file a Notice of Claim expired on October 11, 2006. Petitioner brought the instant Order to Show Cause on November 17, 2006.

Actual Knowledge of Essential Facts Underlying Claim Within 90-Day Statutory Period

Petitioner maintains that respondents accrued actual knowledge of the essential facts underlying the claim within the 90-day statutory period. Petitioner includes as Exhibits "B" and "C" to the instant motion a No-Fault Letter and an Application for No-Fault Insurance Benefits sent to the MTA within the 90-day period. Said Application was allegedly served on the MTA on August 28, 2006. These documents provide the name and address of the claimant, the nature of the accident and injuries, the date, time, and place of the accident, and the number and route of the bus. Respondents assert that they do not own, operate, maintain, or control the Q101 Bus Route on which the alleged accident occurred, and they attach to their motion a bus map which it is argued indicates that the Q101 bus route was owned and operated solely by Queens Surface.

This Court finds that the respondents had actual knowledge of the essential facts underlying the claim within the 90-day statutory period. As the No-Fault Application which was undisputedly received by the respondents well within the 90-day statutory period, provided the name and address of the claimant, the nature of the accident and injuries, the date, time, and place of the accident, and the number and route of the bus, the respondents had actual knowledge of the essential facts constituting the claim (*see Miller v. Liberty Lines*, 208 AD2d 454 [1<sup>st</sup> Dept 1994]). The Appellate Division, Second Department has held that this factor "should be accorded great weight." (*See In the Matter of Nahema Canty v. City of New York*, 273 AD2d 467 [2d Dept 2000]).

Substantial Prejudice as a Result of the Delay

Petitioner asserts that the respondents had actual knowledge of the essential facts constituting the claim within ninety (90)

days after the claim arose, and as such, no prejudice will accrue to respondents. Respondents maintain that the Notice of Claim was not served until well after the 90-day statutory period, and as such the respondents' ability to conduct a prompt investigation (i.e, locate and interview witnesses, conduct a statutory hearing and interview its own employees while memories were still fresh, with an eye towards future litigation) into the matter immediately following the occurrence has been hindered. Respondents contend that they had no knowledge of the alleged occurrence until the instant motion.

This Court finds that the delay would not substantially prejudice the respondents in their defense on the merits. The petitioner brought the instant motion just over one (1) month after the statutory period expired and just over four (4) months after the claim arose and filed a No-Fault Application well within the 90-day period. "As the [Respondents] had actual knowledge of the essential facts underlying the claim, there is no substantial prejudice to the [Respondents] as a result of the delay." (*In the Matter of Nahema Canty v. City of New York*, 273 AD2d 467 [2d Dept 2000]). The respondents could have conducted an investigation while the facts regarding the incident were still fresh (*see In the Matter of Mariya Gofman v. City of New York*, 268 AD2d 588 [2d Dept 2000]).

#### Reasonable Excuse for the Delay

\_\_\_\_ Respondents argue that petitioner has failed to provide an explanation for the delay in seeking to file a late Notice of Claim, and as such, the application must be denied, *citing Dube v. City of New York*, 158 AD2d 457 [2d Dept 1990].

This Court finds that petitioner has failed to offer any excuse for her failure to timely serve the Notice of Claim, however, the Appellate Division, Second Department has held that "where, as here, there was actual notice and an absence of prejudice, the absence of a reasonable excuse for failing to timely serve a notice of claim will not bar the granting of leave to serve a late notice of claim." (*Nardi v. County of Nassau*, 18 AD3d 520 [2d Dept 2005][citations omitted]; *see also Bertone Commissioning v. City of New York*, 27 AD3d 222 [1<sup>st</sup> Dept 2006]) (holding that the absence of a reasonable excuse is not, in and of itself, fatal to the application).

#### Conclusion

In conclusion, the petitioner has established that the respondents had actual knowledge of the essential facts

underlying the claim within the statutory 90-day period, and will not be prejudiced in defending the claim on the merits. Additionally, petitioner's application was made within the applicable period to commence an action (see *Haynes v. City of New York*, 100 AD2d 572 [2<sup>nd</sup> Dept 1984]). Accordingly, under all the circumstances, petitioner's application is granted.

Petitioner is given leave to serve her Notice of Claim within thirty (30) days from the date of this order with notice of entry.

Accordingly, it is hereby

ORDERED, that pursuant to General Municipal Law § 50-e(5), petitioner is granted leave to serve a late Notice of Claim upon the respondents, Metropolitan Transportation Authority and New York City Transit Authority in a form as required under General Municipal Law § 50-e(2); and it is further

ORDERED, that the proposed Notice of Claim annexed to petition as Exhibit D, is hereby deemed served upon the respondents, Metropolitan Transportation Authority and New York City Transit Authority as required under General Municipal Law § 50-e, effective of the date of this order.

This constitutes the decision and order of this Court.

Dated: March 22, 2007

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**Howard G. Lane, J.S.C.**