

<b>Matter of Karam v New York City Tr. Auth.</b>
2007 NY Slip Op 30512(U)
March 22, 2007
Supreme Court, New York County
Docket Number: 0100195/2007
Judge: Donna Marie Mills
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 21

In the Matter of the Application of  
KRISTINE KARAM  
Plaintiff,  
-against-  
  
NEW YORK CITY TRANSIT AUTHORITY,  
  
Respondent.

INDEX NO. 100195/07  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion to file a late notice of claim.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits-- Exhibits....	<u>1</u>
Answering Affidavits- Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>
CROSS-MOTION: <u>YES</u> <input checked="" type="checkbox"/> <u>NO</u> <input type="checkbox"/>	

**UNFILED JUDGMENT**  
This judgment has not been filed and notice of entry (Case No. \_\_\_\_\_) must be obtained by the County Clerk and the County Clerk's Office. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1417).

Upon the foregoing papers, it is ordered that this motion for leave to serve a late notice of claim is decided as follows.

Petitioner alleges to have been injured on May 2, 2006 while walking on the sidewalk along East 60<sup>th</sup> Street in New York County when she tripped and fell over the raised edge of a metal grate situated in the sidewalk. On July 26, 2006, petitioner filed a notice of claim against the City of New York. However, the City of New York denied the claim and alleged that the New York City Transit Authority (the "Authority") owned the subject grating which purportedly caused the petitioner to fall. Petitioner now brings this order to show cause to file a late notice of

claim against the Authority.

General Municipal Law § 50-e(5) enumerates certain factors which the court should consider in making a determination on a request for an exemption from the 90 day filing requirement for a notice of claim, of which the key considerations are “whether the petitioner has demonstrated a reasonable excuse for failure to serve a timely notice of claim, whether the [public corporation] acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the [pubic corporation] in maintaining its defense on the merits” (Matter of Charles v New York City Health & Hosps. Corp., 166 AD2d 526, 527 [2<sup>nd</sup> Dept. 1990])

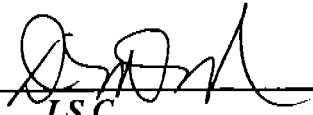
In this case, the Authority opposes the motion on the sole grounds that they do not own, operate, repair, maintain or control the alleged accident location. The aforementioned statutory factors that are required for this court to grant the filing of a late notice of claim does not include the requirement that petitioner offer evidence establishing that she had a meritorious claim against the Authority.

This court finds that the petitioner has demonstrated a reasonable excuse for failure to serve a timely notice of claim and that the Authority acquired actual knowledge of the essential facts constituting the claim after a reasonable time thereafter (within seven months), and no prejudice inured to the Authority which would hamper their ability in maintaining its defense on the merits.

Accordingly, the notice of claim in the proposed form annexed to the moving papers is deemed timely served upon service of a copy of such judgment, with notice of entry, on the Authority.

This constitutes the judgment of the court.

Dated: 3-22-07

  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**UNFILED TO SUPERSEDE**  
This judgment has been filed with the County Clerk and notice of entry has been given to the parties. To obtain entry, the judgment must be signed by the representative must appear in person at the Judgment Clerk's Desk (Room 141B).