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| <b>Byer v City of New York</b>   |
| 2026 NY Slip Op 31662(U)   |
| April 9, 2026  |
| Supreme Court, New York County   |
| Docket Number: Index No. 163734/2025   |
| Judge: Carol Sharpe  |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. CAROL SHARPE PART 52M**

*Justice*

-----X

DIANA BYER

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 163734/2025

MOTION DATE 10/17/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7  
were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, the Order to Show Cause (“OSC”) seeking leave to file a late notice of claim is granted.

Petitioner Diana Byer moved by OSC seeking leave to file a late notice of claim pursuant to General Municipal Law (“GML”) § 50-e(5), and having same deemed timely, *nunc pro tunc*, on the grounds that the notice of claim was promptly filed by her newly retained counsel 1-day after the 90-day statutory filing period expired and that there is no substantial prejudice to the Respondent, The City of New York (“The City”). The City filed written opposition.

On June 2, 2025, petitioner served a notice of claim without leave of the Court against The City, the New York City Department of Transportation, and the New York City Board of Education, (NYSCEF Doc. #4), alleging that on March 3, 2025, she sustained injuries when she was struck by an unknown person riding a Citi Bike while she was in the crosswalk located at the intersection of East 22<sup>nd</sup> Street and 1<sup>st</sup> Avenue, New York County. Petitioner alleges that in addition to its agent and/or employee owning and operating the Citi Bike that caused her injury,

The City owned, operated, controlled, and maintained the improperly designed crosswalk, causing the defective condition that resulted in her injuries.

On October 17, 2025, petitioner filed the instant OSC seeking leave to file a late notice of claim, which was filed within the applicable one year and 90-days statute of limitations for each claim for which petitioner seeks relief. Petitioner argues that The City will not be prejudiced by the delay because the subject intersection has remained unchanged since March 3, 2025, and there are no known witnesses to the accident (NYSCEF Doc. #3, ¶24).

The City opposes the OSC on the grounds that petitioner failed to comply with the requirements of GML § 50-e; that petitioner failed to demonstrate that The City will not be substantially prejudiced by her failure to timely file a notice of claim; that petitioner failed to offer a reasonable excuse for not timely filing the notice of claim; that the claims are patently meritless as this is a private dispute between two individuals to which The City is a stranger; and that petitioner failed to identify any connection between the Citi Bike operator's alleged negligence and The City's maintenance of public streets.

GML § 50-e (1)(a) provides in pertinent parts that a notice of claim shall be served "within ninety days after the claim arises." GML § 50-e (5) permits the court, upon application and at its discretion, to extend the time to serve provided the extension does not exceed the time limited for a claimant to commence an action, and the claimant offers a reasonable excuse (*Matter of Rivera v NY City Hous. Auth.*, 25 AD3d 450, 807 NYS2d 373 [1st Dept 2006]). "In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including:

whether the claimant was an infant, or mentally or physically incapacitated...” (GML § 50-e (5); *see generally Matter of Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 45 NYS3d 895, 68 NE3d 714 [2016]; *Matter of Jaime v City of New York*, 41 NY3d 531, 540, 237 NE3d 796, 213 NYS3d 730 [2024]).

The question of “acquired actual knowledge of the essential facts constituting the claim...” is to be considered “in particular” by the court as great weight is placed on those facts (*Matter of Jaime*, 41 NY3d at 540). “In addition to actual knowledge, the courts must consider “all other relevant facts and circumstances” (General Municipal Law § 50-e [5]), and “the presence or absence of any one factor is not determinative” (*Matter of Morris v County of Suffolk*, 88 AD2d 956, 957, 451 NYS2d 448 [2d Dept 1982], *aff’d* 58 NY2d 767 [1982])” (*id.* at 541). The lack of actual knowledge deprives The City of the opportunity to investigate the circumstances underlying the claim (*Lerner v State of New York*, 72 AD3d 406, 407, 897 NYS2d 100 [2010], *lv. denied*, 15 NY3d 703 [2010]; *Nossogona C. v New York City Health & Hosps. Corp.*, 213 AD3d 407, 408, 183 NYS3d 374 [1st Dept 2023] [“Given defendants' lack of notice, the court correctly determined that they have been deprived of the opportunity to conduct a prompt investigation of the merits of plaintiff's claim and, therefore, prejudiced by plaintiff's delay in seeking to serve a late notice of claim”]).

The question of substantial prejudice, or the lack thereof, is decided under the burden-shifting framework and “the burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation” (*Matter of Newcomb*, 28 NY3d at 466). “Once this initial showing has been made, the public corporation must respond with a particularized evidentiary showing that the corporation will be substantially prejudiced if the late notice is allowed...[t]he public corporation, however, is in the best position to know and demonstrate

whether it has been substantially prejudiced by the late notice.” (*id.* at 467-468). The length of the delay and the lack of actual knowledge are factors to be considered in determining whether The City is substantially prejudiced (*see Williams v Nassau County Med. Ctr.*, 6 NY3d 531, 539, 814 NYS2d 580 [2006] [“Like the length of the delay in service, proof that the defendant had actual knowledge is an important factor in determining whether the defendant is substantially prejudiced by such a delay.”]; *Matter of Newcomb*, 28 NY3d at 465).

While the decision to grant or deny a motion to serve a late notice of claim is discretionary, the decision must be supported by the evidence (*Matter of Newcomb*, 28 NY3d at 465). It is well settled that as a matter of law “[l]eave to file a late notice of claim should be denied where the claims are “patently meritless” (*see Matter of Catherine G. v County of Essex*, 3 NY3d 175, 179, 818 NE2d 1110, 785 NYS2d 369 [2004]).” (*Swinton v. City of N.Y.*, 61 AD3d 557, 558, 877 NYS2d 68, 69 [1st Dept 2009]). Claim of a design defect is not “patently meritless” (*see generally Petronic v City of NY*, 211 AD3d 862, 181 NYS3d 148 [2d Dept 2022]).

“[F]ailure to offer a reasonable excuse is not necessarily fatal to a motion for leave to serve a late notice (*see Colarossi v City of New York*, 118 AD3d 612, 612, 989 NYS2d 24 [1st Dept 2014]; *Alladice v City of New York*, 111 AD3d 477, 478, 974 NYS2d 437 [1st Dept 2013]).” (*Clarke v N.Y.C. Transit Auth.*, 222 AD3d 552, 553, 202 NYS3d 89, 90-91 [1st Dept 2023]; *Matter of JJCRR v NY City Hous. Auth.*, 233 AD3d 512, 221 NYS3d 530 [1st Dept 2024] [“However, the absence of a reasonable excuse, standing alone, is not fatal in light of all the circumstances, including the lack of prejudice and the relative brevity of the delay”]).

Here, petitioner has met her initial burden of demonstrating a lack of substantial prejudice to The City as to the subject crosswalk as there is no evidence that it has changed since the date of her accident. While petitioner’s claim is that the accident was caused by an unknown rider who is

an agent and/or employee of The City and acknowledges that the notice of claim is 1-day late, this Court finds that the notice of claim satisfied the statute as it was filed within a reasonable time after the 90-day statutory requirement and that the delay will not cause substantial prejudice to The City. Accordingly, it is hereby:

**ORDERED**, that the petition for leave to serve a late notice of claim and to have same deemed served timely, *nunc pro tunc*, is granted in its entirety; it is further

**ORDERED**, that the notice of claim is deemed to have been timely served from the date it was filed; it is further

**ORDERED**, that petitioner shall commence a new action and purchase a new index number in the event a lawsuit arising from the Notice of Claim and/or the Amended Notice of Claim is filed; it is further

**ORDERED**, that petitioner shall serve this Order with Notice of Entry upon all parties, the Clerk of the Court, and the Clerk of the General Clerk’s Office, within twenty (20) days of the date of this Order and file proof of service within (10) days of effectuating said service; and it is further

**ORDERED**, that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

April 9 2026  
DATE

ENTER:

  
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HON. CAROL SHARPE, J.S.C.  
**HON. CAROL SHARPE**  
J.S.C.

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| CHECK ONE:            | <input checked="" type="checkbox"/> CASE DISPOSED   | <input type="checkbox"/> DENIED | <input type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER     |
| APPLICATION:          | <input checked="" type="checkbox"/> GRANTED         |                                 | <input type="checkbox"/> GRANTED IN PART       |                                    |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER               |                                 | <input type="checkbox"/> SUBMIT ORDER          |                                    |
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