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MORRIS DUFFY ALONSO & FALEY

NEW YORK MUNICIPAL LAW UPDATE

We have analyzed the following significant cases which have recently been decided by the Court of Appeals and Appellate Division, Second Department. They apply to issues involving sidewalk snow and ice, police officer liability, qualified immunity and the lack-of-notice defense in sidewalk cases.

MUNICIPAL LACK-OF-NOTICE DEFENSE

In Gorman v. Town of Huntington, decided this month by the Court of Appeals, plaintiff sued the town after she tripped and fell on an uneven piece of sidewalk in front of a local church. Four months prior to plaintiff's fall, the church's pastor, as directed by Town employees, had written to the Town's Department of Engineering Services, the department responsible for the Town's sidewalks, complaining that the sidewalk needed repair.

Huntington Town code stipulates that civil actions may not be sustained for injuries suffered due to uneven or broken sidewalks unless prior written notice of the specific location of the defects is made to the town clerk or the highway superintendent. It further explicitly states that service of the notice on a person other than the town clerk or highway superintendent "shall invalidate the notice."

The Appellate Division had found that the Town had waived strict compliance with Town code by allegedly delegating the statutorily imposed duty of maintaining deficient sidewalk complaints from the town clerk and highway superintendent to the Department of Engineering Services.

In a 4-3 decision, the Court reversed the Appellate Divisions decision which granted plaintiff's motion for summary judgment dismissing the Town's affirmative defenses asserting lack of proper prior written notice. According to the Court, "prior written notice provisions, enacted in derogation of common law, are always strictly construed." The policy behind this rule is to limit a municipality's duty of care "by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specific location." It does not mean, however, that every written complaint to a municipal agency necessarily satisfies the strict requirements of prior written notice, or that any agency responsible for fixing the defect that keeps a record of such complaints, by that fact alone, qualifies as a proper recipient of such notice.

Here, it was undisputed that neither the town clerk nor highway superintendent received prior written notice of the sidewalk defect. The Department of Engineering, which did receive notice, was not, however, a statutory designee and, therefore, notice to that department was insufficient for purposes of notice under Huntington Town code.

It is anticipated that this holding will have a significant impact on the law of municipal liability.

SNOW AND ICE ON SIDEWALKS

In Cruz v. County of Nassau, 867 N.Y.S.2d 523 (2nd Dept. 2008), the plaintiff slipped and fell on ice on a public sidewalk abutting premises owned by the defendants.

In affirming the dismissal of the plaintiff's complaint, the Appellate Division held that an owner of property abutting a public sidewalk may

not be held liable for injuries to pedestrians arising out of the failure to remove snow and ice that naturally accumulates on the sidewalk unless a statute or ordinance specifically imposes tort liability for failing to do so. The Village of Freeport ordinance did not. The Court further held that in the absence of such a statute or ordinance, the owner can be held liable if he or she, or someone acting on his or her behalf, undertook snow and ice removal efforts that made the naturally occurring conditions more hazardous. However, failure to remove all of the snow and ice from the sidewalk does not constitute negligence.

POLICE OFFICER LIABILITY

Pursuant to NYVTL § 1104(e), the manner in which a police officer operates his or her vehicle in responding to an emergency may not form the basis for civil liability to an injured third party unless the officer acted in reckless disregard for the safety of others. The reckless disregard standard requires proof that the officer intentionally committed an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow.

In Britt v. Bustamente, 866 N.Y.S.2d 740 (2nd Dept. 2008), the question arose as to whether a police officer, who was engaged in an emergency operation at the time, acted in reckless disregard when he was involved in an automobile accident with plaintiff. In reversing the grant of summary judgment for the police officer, the Appellate Division held that the plaintiff had created an issue of fact by submitting an affidavit of an eye-witness who stated that while the police officer had activated the turret lights on his vehicle, he had not activated the overhead emergency lights or the sirens. Under these circumstances, where it was undisputed that the officer did not stop for the stop sign at the intersection and that his view of the intersection was partially obstructed by hedges, summary judgment was not warranted.

QUALIFIED IMMUNITY FOR HIGHWAY DESIGN

In Guan v. State of New York, 866 N.Y.S.2d 697 (2nd Dept. 2008), the decedent was killed when his car veered off the Northern State Parkway and struck a tree 24 feet from the edge of the roadway. Claimant argued that under modern design standards, the highway should have had a "clear zone" (an area without fixed objects that is adjacent to a highway and intended as a safety zone for vehicles that leave the roadway) measuring 30 feet.

Generally, a municipality owes to the public the absolute duty of keeping its streets in reasonably safe conditions. However, under the Qualified Immunity doctrine, liability for highway planning decisions may arise only where there is proof that the state's traffic design plan "evolved without adequate study or lacked reasonable bases."

In affirming the dismissal of the decedent's claim, the Appellate Division held that the evidence at trial showed that the state had conducted an extensive study of parkway systems, after which it adopted a policy for establishing 30-foot clear zones for new or major construction and 20-foot clear zones for rehabilitation and minor upgrading and, therefore, qualified immunity applied.

Furthermore, compliance with design standards adopted after the construction of a highway is not required unless significant repair or reconstruction is undertaken. Here, even though the median was replaced, the road was re-paved and the drainage system was improved, these changes did not materially alter the roadway itself and did not constitute significant repair or reconstruction.

Lastly, the Court held that the state was not on constructive notice of a dangerous condition as the evidence showed that the daily traffic volume at the site was 65,000 to 70,000 vehicles per day, and there had been only 11 collisions with trees in the area from 1991 to 2000.