

Court of Appeals Municipal Update

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In a recent case the state's highest court clarified notice of claim requirements as they apply to intentional torts. Matter of *Jaime v. City of New York*, 41 N.Y.3d 531 (2024) addressed two separate cases both involving intentional torts: false arrest, malicious prosecution and an assault.

When the state of New York waived its sovereign immunity in 1929, it lost its protection from suit. This included its subdivisions and the city of New York. In exchange, the legislature granted certain protections to the municipalities in the General Municipal Law. The most effective of these is the requirement that a tort claim against any municipality cannot be commenced unless the claimant served upon the municipality a notice of claim within 90 days of the claims accrual. General Municipal Law §§50-i[1]; 50-e[1].

This notice serves to alert the municipality and enable it to: investigate the claim and preserve necessary evidence. It also triggers the municipalities right to an oral and physical examination that is not available in a tort case brought against non-municipal defendants.



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In the event that plaintiff fails to serve a timely Notice of Claim, General Municipal Law §50-e[5] permits claimant to seek leave to serve a late Notice of Claim, as long as the one year and 90 days statute of limitations has not expired. The court may grant leave if the municipality "acquired actual knowledge of the essential factors constituting the claim within a reasonable time thereafter." General Municipal Law §50-h.

It is with this background that the Court of Appeals examined two intentional tort cases to determine if alleged participation of the city's employees and the alleged creation and possession of records, provided "actual knowledge" of the essential facts

constituting the claims. Claimants in both cases filed petitions for leave to serve a late notice of claim.

In the Matter of *Orozco v. City of New York*, *supra*, claimant Adam Orozco alleged that he was arrested by officials of the New York City Police Department (NYPD) who had submitted “false” and “fabricated” evidence of an unspecified nature to a magistrate who issued a warrant for his arrest. Orozco alleged he was maliciously prosecuted and wrongfully detained for five months when the criminal proceedings resulted in his favor.

Orozco argued that the actual knowledge of the arresting officers could be imputed to the city and that the city also acquired actual knowledge from the records created by the arresting officers. No records were ever produced or requested by Orozco’s attorney. Other factors proffered by the petitioner include: his limited English, California residency and the COVID-19 pandemic.

The High court held that mere allegations that the NYPD participated in the arrest and prosecution did not constitute facts or evidence. The alleged existence of the records similarly did not establish actual knowledge. No attempt was made to obtain these records. As such, actual knowledge could not be imputed to the city.

As the claim for false arrest and malicious prosecution did not accrue till the date of release from custody, this was held not to be an acceptable excuse. The COVID-19 pandemic benefited the plaintiff as executive orders tolled plaintiff’s claim.

Petitioners excuses were found to be legally insufficient.

The court in its decision emphasized the only tort claims exempt from the notice of claim requirement are those arising out of sex crimes against children. General Municipal Law §50-e[8][6].

In the Matter of *Jaime v. City of New York*, *supra*, the same attorney in the Orozco case represented Luis Jaime. He filed 5 proposed notices of claim relating to Jaime’s detention at Riker’s Island. All but one of the notices used nearly identical language. Petitioners allege he was struck by correction officers, who he identified, about the body, head and face. He claims to have told Department of Correction employees (DOC) prior to the attacks that he was in “imminent danger” and asked to be placed in protective custody.

Petitioner went to the prison infirmary for injuries that included a fractured arm. As excuses for the failure to file a timely notice of claim plaintiff cited: his detention, failure to obtain legal representation and to COVID-19 pandemic. Claimant had previously filed numerous grievances with the DOC none of which pertained to the incidents in question. Claimant’s petition was denied. While copies of previous grievances were provided by counsel, none were filed relating to the incidents which formed the basis of the petition to serve late notice.

Moreover, although Luis Jaime went to the infirmary, no records from the infirmary were attempted to be obtained or produced. No attorneys’ affirmation attesting to an effort

to obtain the records was made part of the record. All other proposed excuses for failure to file a timely notice of claim were dismissed by the court.

Judge Rivera in her dissent concurred with the result in Orozco but dissented in Jaime and opined that the fact that claimant identified his attacking officers supported the conclusion that the city had actual knowledge of the fact constituting the petitioner's claim.

She also disagreed with majority that found the infirmity records should have been produced or at least an affidavit of counsel that he unsuccessfully sought production of the records. She points out that under the majority's analysis an affidavit of Jaime that he told the infirmity staff of the causation of his injuries would have established "actual knowledge."

The public policy considerations of the High Court were clearly expressed. To grant the petitioner's leave to file late notices of claim in these cases would categorically exempt from the notice of claim requirement claims of battery, false arrest and malicious prosecution.

In a case involving the prior written notice requirement the Court of Appeals has held that an online reporting system can serve as "written notice" required by statute. This decision acknowledges the enormous changes that have taken place in municipal record keeping and reporting. This constitutes an unprecedented expansion of the definition of the term "prior written notice."

Prior written notice statutes require that a municipality receive prior written notice of

roadway defects and be given a reasonable opportunity to remedy these defects. They have been held to a valid exercise of legislative authority. There are two exceptions to the requirement that that written notice be given. First: is when the defect was affirmatively created by the locality. Second: where a "special use" confers a special benefit to the locality.

The city of Albany's prior written notice statute states that: No civil action shall be in any way maintained against the city...in consequence of any street...being defective...unless...written notice of the defective...street...was actually given to the Commissioner of Public Works. (Code of City of Albany, Former §24-1[A]. Emphasis supplied.

In *Calabrese v. City of Albany*, 43 N.Y.3d 167 (2024) the plaintiff lost control of his motorcycle on Lark Street in the city and was injured by a road defect the city had not repaired. Several reports were previously submitted to the city through an online reporting system named SeeClickFix (SCF).

Plaintiff claimed that notice on the SCF constituted prior written notice of the defect as required by the statute. Defendant Albany moved for summary judgment to dismiss plaintiff's claim for failure to comply with the prior written notice statute. The Supreme Court denied defendant's motion, the Appellate Division affirmed.

It is interesting to note that the cities of: Syracuse, Ithaca, Binghamton, Rochester and Buffalo submitted amici curiae briefs in support of defendant Albany's appellate brief.

Additionally, the New York State Conference of Mayors and Municipal Officials also submitted an amicus curiae brief.

The High Court noted that the statute was enacted in 1983. 15 years-later the Department of Public Works (and the Commission of Public Works) was abolished. Their function were transferred to the Department of General Services (DGS).

The SFC system used a software application or website that allowed citizens to report anything that should be addressed by any city department. The system would automatically route the complaint to the proper government office. In *Calabrese*, this would have been the DGS. The court opined that when the city in 1983 enacted the code it would not contemplate software capable of sending communication from the public over the internet to municipal officials.

In a rejection of originalism the court found that it was impossible to comply with the statute as the commissioner of Public Works had not existed for over 20 years. It acknowledged that other courts have found that “written notice” could be on paper or other mediums including e-mails while at the same time rejecting verbal or telephone communication. The court found that the prior written notice requirement was

met by the report to SCF who routed it to the proper designee the DGS.

Plaintiff had claimed that the city insufficiently patched the hole in question when it had backfilled a water main repair by an affirmative act thus waiving the requirement of written notice. The court found this to be a question of fact precluding summary judgment. Additionally, plaintiff claimed that the water main break was a proprietary not a governmental act and thus the ordinary standard of negligence applied. The court found that road repairs were a proprietary function in the ordinary rules of negligence would be applied.

The Court of Appeals held that the SCF was prior written notice under the statute but found questions of fact as to whether the complaints in this case were based on verbal or written complaints and if they specifically related to the roadway depression at issue.

By holding that the online reporting system SFC constitutes prior written notice the Court of Appeals opened the door to the modern reality that online systems created a method for citizens to register complaints that are legally viable and comply with prior written notice statutes.

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