Improvement and Unification of Provisions Relating to Notices of Claim Against Public Corporations

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mortgagor's failure to assign and deliver the policies or to reimburse the mortgagee for any payments made by him for premiums.

It will be noted that nothing in the language of covenant "2" of Section 258 would inform a mortgagor signing the New York short form of mortgage that he was agreeing to a statutory acceleration of maturity of principal in the event that he so failed to reimburse the mortgagee or failed to assign and deliver the policies to him. Indeed the covenant does not even mention the fact that if the mortgagor fails to insure as agreed that the mortgagee may insure the buildings and pay the premiums and then look to the mortgagor for reimbursement.

To overcome the discrepancy at present existing between the language of this covenant "2" of Section 258 and its statutory construction as given in Section 254(4), the legislature added at the end of covenant "2" the following:

that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.

A similar change has been made in the wording of Section 254, subdivision 4, so as to make it more clearly relate to the language of Section 258, clause "2".

The covenant in the mortgage providing for acceleration of maturity of the principal sum in the case of certain defaults, i.e., covenant "4" of Section 258, has been enlarged to include also the statutory acceleration as construed by Section 254, subdivision 4, by the addition of the words:

... or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the bond and mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided.

It was desirable that this amendment to the New York Real Property Law in relation to certain clauses in the statutory short form mortgages and mortgage bonds and the construction thereof should be made so that the language of the statute would not be misleading and that the grace period might be made to apply to defaults in the payment of installments of principal as well as to defaults in interest payments.

MARY K. BLAIR.

IMPROVEMENT AND UNIFICATION OF PROVISIONS RELATING TO NOTICES OF CLAIM AGAINST PUBLIC CORPORATIONS.—As a matter of common law a municipal corporation when acting in its governmental or public capacity is not liable for its torts and when acting
in its corporate or private capacity it is liable.\(^1\) Of course in either event its agents are responsible for torts committed by them whether or not the municipality is liable.\(^2\) However, by statutes a municipality has been made liable for the negligence of an appointee, policeman or fireman upon the public highways within the scope of his employment and it is obligated to save harmless the employee in such operations.\(^3\) Also by statute a municipality is liable for damages for personal injuries caused by a physician or dentist rendering medical or dental service gratuitously to a person in a public institution maintained by the municipality and must save such physician or dentist harmless for damages for personal injuries sustained by a patient by reason of malpractice.\(^4\)

The various provisions contained in these statutes which had to be met as conditions precedent to the commencement of an action or special proceeding against a public corporation or an officer, appointee or employee thereof were not uniform either in respect to the contents of the notice of claim, the period prescribed for giving the notice, the method of delivery, the persons upon whom it should be served or the need of further service, notice or filing to commence an action or special proceeding.

Accordingly the Judicial Council recommended to the Legislatures of 1943 and 1944 amendments to the statutes to rectify the frequent and often gross injustices by which defects in form (in part attributable to these diverse requirements) have prevented consideration on their merits of claims against municipal corporations. They felt that:

The requirement of notice is one of the safeguards devised by the law to protect municipalities against fraudulent and stale claims for injuries to person and property. It is designed to afford the municipality opportunity to make an early investigation of the claim while the facts are still "fresh". On the other

\(^1\) While it is difficult to determine when a municipal corporation is acting in one capacity or another the exercise of the duties of policemen and firemen, the regulation of traffic lights, the care and erection of public buildings as prisons and court houses and the lighting of streets are examples of public functions. See Oeters v. City of New York, 270 N. Y. 364, 1 N. E. (2d) 466 (1936); Parsons v. City of New York, 273 N. Y. 547, 7 N. E. (2d) 685 (1937); Wilcox v. City of Rochester, 190 N. Y. 137, 82 N. E. 1119 (1907).


\(^3\) Gen. Mun. Law §§ 50-a, 50-b, 50-c. See Gen. Mun. Law § 50-d. Examples of other statutes under which municipal corporations are made liable for actions founded upon tort are: County Law §§ 6, 6-a, 6-b and 6-c; Town Law § 67; Village Law §§ 341 and 341-b; Second Class Cities Law § 244; Education Law § 858-a; Highway Law § 215, subd. 3.
hand "these provisions (notice statutes) were not intended as a trap for the unwary and the ignorant." An examination of the decisional law, however, indicates that far too often technicalities in this field have prevented the disposition of honest claims on their merits.

In 1944 a compromise bill was prepared as a result of conferences with representatives of the County Officers Association, the Conference of Mayors, the Town Officers Association and several county attorneys but failed of enactment because of the impossibility of making certain changes before the scheduled closing of the legislative session.

The bill was finally passed by the 1945 Legislature so that on April 10, 1945 the General Municipal Law was amended by adding Section 50-e and by concurrently amending Sections 50-c and 50-d together with the other statutes affected so that the provisions of notice of claim, service thereof, etc., in connection with various types of public corporations which were formerly contained in these statutes were consolidated under the new Section 50-e.

The law provides briefly that in any case founded upon tort where a claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the General Corporation Law, or any officer, appointee or employee thereof, the notice shall comply with the provisions of Section 50-e and it shall be given within sixty days after the claim arises.

The notice shall be in writing naming the claimant and his attorney, the nature of the claim and "the items of damage or injuries claimed to have been sustained so far as then practicable."

Service of the notice on the party against whom the claim is made may be made personally or by registered mail to "the person, officer, agent, clerk or employee designated by law as a person to whom a summons in an action in the supreme court issued against such party may be delivered."

While no further notice, etc., is required to commence an action or special proceeding, notice of a defective or obstructed condition of a street or highway or of the existence of snow or ice thereon must still be given as a condition precedent to establish negligence to repair or remove the same.

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5 Note (1932) 17 CORN. L. Q. 687.
7 See note 5 supra.
8 The Judicial Council originally recommended ninety days, the compromise bill of 1944 thirty days, but the Judicial Council in renewing their recommendation for passage of the bill pointed out that a longer period would be more equitable. See Eleventh Annual Report, Judicial Council, 1945, p. 52.
Under certain circumstances the court may extend by a reasonable time the sixty-day notice provision for infants and incapacitated persons if such application is made within a year.\(^9\)

There is a provision to the effect that mistakes, omissions, irregularities or defects made in the notice of claim required to be served, not pertaining to the manner or time of service, may be corrected, supplied or disregarded in the discretion of the court.

Section 50-e specifically provides that it shall not apply to claims arising under the provisions of the Workmen's Compensation Law, nor to claims arising under Article Ten of the General Municipal Law (regarding rights and privileges of firemen and policemen). The Act became effective September 1, 1945 but was not to apply to claims accruing before that date.

The statute is a welcome step toward securing uniformity in the preparation and presentation of tort claims against public corporations and gives promise of a more equitable administration of justice in this field.

ROBERT E. VON ELTEN.

**Amendment to the Insurance Law Relating to the Rights of Judgment Creditors Against Liability Insurers.—** Effective September 1, 1945, Section 167 of the New York Insurance Law was amended by the addition of subsection seven.

Before the adoption of this amendment, that is, under Section 167 and its predecessor, Section 109, an action against the liability insurer could be brought only by the injured person, or his personal representative, who had recovered a judgment for damages against his tort-feasor, the insured. The amendment gives this right of action, in addition to the injured person, or his personal representative, to three other classes of judgment creditors: assignees, contribution creditors and indemnity creditors.

Under the common law of New York an injured party had recourse only against the insured, his tort-feasor. He could have no recourse against the liability insurer. If the insured was execution proof, the injured person could collect nothing; the insured sustained no pecuniary loss or damage and the insurer was under no duty to pay. In 1917, to give the injured person an additional remedy, Section 109 was adopted.

This section provided that no policy of insurance against loss or damage resulting from an accident or injury should be valid unless there was contained in the policy a provision that the insolvency or bankruptcy of the person insured or the insolvency of his estate

\(^9\) The Judicial Council originally recommended "a reasonable time after the disability ceases" while the compromise bill of 1944 provided for six months.