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25-P-1005

Appeals Court

SHE LING WANG vs. CITY OF CHELSEA & another.¹

No. 25-P-1005.

Suffolk. May 8, 2026. - August 18, 2026.

Present: Vuono, Neyman, & Smyth, JJ.

Massachusetts Tort Claims Act. Practice, Civil, Presentment of claim under Massachusetts Tort Claims Act, Summary judgment. Consumer Protection Act, Demand letter, Unfair act or practice. Negligence.

Civil action commenced in the Superior Court Department on August 1, 2022.

The case was heard by Catherine H. Ham, J., on a motion for summary judgment.

John G. Mateus for the plaintiff.
Daniel G. Skrip for the defendants.

NEYMAN, J. In this appeal, we consider whether the contents of a demand letter, sent pursuant to G. L. c. 93A, § 9, sufficed to meet the presentment requirements of the

¹ Inspectional services department of Chelsea.

Massachusetts Tort Claims Act (MTCA), G. L. c. 258, § 4. We conclude that the letter, which -- among other shortcomings -- failed to reference a cause of action under the MTCA, the factual basis of liability, the legal theory of liability, or the date of the incident, was insufficient as a matter of law, and we thus affirm the summary judgment in favor of the defendants, the city of Chelsea, and its inspectional services department (collectively, the city).

Background. We view the facts of record in the light most favorable to the nonmoving party (here, the plaintiff), as required by the summary judgment standard. See, e.g., Sea Breeze Estates, LLC v. Jarema, 94 Mass. App. Ct. 210, 215 (2018). The plaintiff, She Ling Wang, owns the subject property in Chelsea, a six-unit building with residential tenants. On June 22, 2021, "the property was back flooded by the city's sewer water, damaging Unit #1 and Unit #2." The following day, the plaintiff met with city officials from the department of public works and the inspectional services department at the property. The plaintiff was advised to remove the subfloor of the flooded basement area. The plaintiff did so and cleaned the subfloor with bleach.

Almost one year later, on May 26, 2022, the plaintiff's attorney sent a letter with the subject line, "M.G.L. ch. 93A Demand Letter for Violation of the Consumer Protection Act," to

the city's legal department. The letter identified the plaintiff as the owner of the property and stated that "[t]his is a formal demand letter sent to you pursuant to . . . Massachusetts General Laws Chapter 93A, § 9 . . . with respect to a claim against [the city]" for alleged unfair or deceptive conduct. The letter further stated that the city² acted in an unfair and deceptive manner because it "made the process of working with the [c]ity on damages the [c]ity caused impossible"; "[u]nfairly, deceptively and illegally made decisions not based on construction experts recommendations"; failed to "provide reasonable solutions based on expert reports such as asking to cut the entire basement subfloor"; refused further contact with the plaintiff; "failed to reimburse for damages caused for construction expenses"; and committed "unfair and deceptive acts and practices that contradict what is in the best interest of building integrity." As discussed below, the letter did not assert that any flooding was caused by the city's negligence. Indeed, the letter contained no reference to flooding or to city sewer pipes.

On August 1, 2022, the plaintiff filed a verified complaint in the Superior Court alleging the following claims against the

² Although far from a model of clarity, the letter attributed some of the alleged unfair or deceptive conduct to the director of the city inspectional department and the city manager.

city: (1) negligence, (2) intentional infliction of emotional distress, (3) negligent infliction of emotional distress, (4) malfeasance, (5) violation of c. 93A, and (6) punitive damages.³

On September 12, 2022, the city filed a motion to dismiss the complaint. On July 27, 2023, a Superior Court judge (first judge) allowed the motion as to claims two through six.

Furthermore, the first judge limited the negligence claim (count 1) to allegations that the city "fail[ed] to properly maintain the sewer pipes."⁴ The plaintiff does not challenge the first judge's ruling in this appeal.

On September 5, 2023, the city filed its answer and raised defective presentment as an affirmative defense.⁵ On August 5, 2024, the city filed a motion for summary judgment based on the plaintiff's failure to satisfy the written presentment requirement of the MTCA. Following a hearing, a different

³ On August 12, 2022, the plaintiff served a verified complaint on the city, which contained some different allegations than the complaint filed in the Superior Court.

⁴ As to the negligence claim, the first judge stated, "[i]n so much that plaintiff . . . claims that the [c]ity was negligent for anything beyond failing to properly maintain the sewer pipes, [the city's] motion is Allowed."

⁵ The city's eighth affirmative defense states, in relevant part, "the Plaintiff failed to fulfill the requirements of . . . G. L. c. 258, § 4, in that he failed to provide timely and sufficient presentment."

Superior Court judge (second judge) allowed the motion and summary judgment entered for the city. This appeal ensued.

Discussion. We review a grant of summary judgment de novo to determine whether, viewing the evidence in the light most favorable to the nonmoving party, "all material facts have been established and the moving party is entitled to judgment as a matter of law." Casseus v. Eastern Bus Co., 478 Mass. 786, 792 (2018). Here, the material facts are not in dispute.

Accordingly, the sole issue before us is whether the content of the plaintiff's c. 93A demand letter met the presentment requirements of G. L. c. 258, § 4, for the tort claims the plaintiff asserted.

General Laws c. 258, § 4, states, in relevant part,

"A civil action shall not be instituted against a public employer on a claim for damages under this chapter unless the claimant shall have first presented his claim in writing to the executive officer of such public employer within two years after the date upon which the cause of action arose"

The statute further provides that "in the case of a city or town, presentment of a claim pursuant to this section shall be deemed sufficient if presented to any of the following: mayor, city manager, town manager, corporation counsel, city solicitor, town counsel" Id. Thus, there are three elements to the presentment requirement: (1) written notification of the claim; (2) presented within two years; and (3) presented to one

of the delineated executive officials of the public employer. See id. There is no dispute that the May 26, 2022, demand letter was timely, and that it was presented to an appropriate executive officer of the public employer, here legal counsel to the city. Thus, we focus our analysis on the adequacy of the letter's content.

Chapter 258, § 4, does not articulate the specific content requirements of a presentment letter. The Supreme Judicial Court, however, has clarified that "a presentment letter should be precise in identifying the legal basis of a plaintiff's claim" and should not be "so obscure that educated public officials should find themselves baffled or misled with respect to [the plaintiff's] assertion of a claim . . . which constitutes a proper subject for suit within G. L. c. 258." Gilmore v. Commonwealth, 417 Mass. 718, 723 (1994). "The Gilmore test seeks to strike an appropriate balance between precision and lack of obscurity so as to satisfy the purposes behind the presentment provision: affording the executive officer the opportunity to investigate the circumstances of each claim, settle, and take preventive measures." Martin v. Commonwealth, 53 Mass. App. Ct. 526, 529 (2002), citing Gilmore, supra at 721-722. The Supreme Judicial Court has also stated that presentment must be made "in strict compliance with the statute." Gilmore, supra at 721, quoting Weaver v.

Commonwealth, 387 Mass. 43, 47 (1982). The strict compliance "precept," however, is "concerned more with whether presentment has been made to the proper executive officer . . . in a timely fashion . . . than with the content of the presentment."

Martin, supra.

Applying these principles to the present case, we hold that the c. 93A demand letter failed to satisfy the presentment requirements of c. 258, § 4, for the following reasons. First, the letter contains no reference to the factual basis of liability. Indeed, there is no reference to the sewer pipes, the incident at issue, or the city's alleged failure to maintain the sewer pipes.⁶ Contrast Martin, 53 Mass. App. Ct. at 530 (although "not a model of particularity," presentment letter "identifies precisely and unequivocally the factual basis of the claims: ingestion of lead paint by the children as a result of the negligence of the Commonwealth's agent").⁷

⁶ As discussed supra, the first judge limited the negligence claim to allegations that the city "fail[ed] to properly maintain the sewer pipes."

⁷ Unlike the purported presentment letter, the complaint alleges that "street storm drains and city drains were incorrectly connected," and further alleges negligence and facts relating to causation, albeit in a confusing manner. The absence of these allegations from the letter bolsters our conclusion that the plaintiff failed to provide adequate notice of the forthcoming MTCA claim.

Second, the letter contains no reference to the legal basis or theory of liability. See Gilmore, 417 Mass. at 723 (presentment letter should be "precise in identifying the legal basis of a plaintiff's claim"). The letter does not even contain the word "negligence" and does not assert that the plaintiff's damages were caused by the city's negligence. See Rodriguez v. Somerville, 472 Mass. 1008, 1011 (2015) (presentment letter inadequate because it failed to identify legal basis for claim against city). Contrast Martin, 53 Mass. App. Ct. at 532 ("the letter, which specifically identified a legal basis, all theories of liability for which were premised upon the same facts, constituted an adequate presentment"). Furthermore, the subject line and content of the letter claimed that the city was liable on a different legal basis -- c. 93A -- for actions other than and subsequent to the failure to properly maintain the sewer pipes. Far from being "precise in identifying the legal basis" of the plaintiff's present claim, the letter cannot fairly be read as stating claims for negligence stemming from the failure to maintain the sewer pipes. Gilmore, supra. See Garcia v. Essex County Sheriff's Dep't, 65 Mass. App. Ct. 104, 110 (2005) (plaintiff's letters "lend themselves to confusion regarding the basis for the claim" and "are thus inadequate to fulfil the statutory purpose of the presentment requirement").

Third, the letter contains no reference to c. 258 or the MTCA. While citation to the statute is not a prerequisite to a proper presentment, its absence here, in combination with the aforementioned shortcomings, bolsters our conclusion. See Garcia, 65 Mass. App. Ct. at 110 (plaintiff's letters inadequate to meet presentment requirements where, inter alia, they did not "identify G. L. c. 258 as a basis of liability"). Contrast Gilmore, 417 Mass. at 723 (although "close" call, presentment letter adequate to satisfy requirements of c. 258 where letter referenced and enclosed nineteen-page complaint in Federal lawsuit setting forth entire factual basis underlying claim).

Finally, the letter contains no reference to the date of the incident or date of injury. The combination of these deficiencies compels the conclusion that the demand letter was inadequate to fulfill the statutory purpose of the presentment requirement. Indeed, we are aware of no case, nor have the parties cited any, where a purported presentment letter failed to reference the cause of action, the factual basis of liability, the legal basis or theory of liability, and the date of the incident, yet was still considered an adequate presentment within the meaning of G. L. c. 258, § 4.⁸ Under

⁸ Although the letter states that the city failed to "reimburse for damages caused for construction expenses," it does not reference the failure to maintain the sewer pipes,

these circumstances, summary judgment was properly allowed.⁹

Judgment affirmed.

dates, the cause of action, the theory of liability, or the legal basis of liability. Such general, undated, and unspecified language does not satisfy the particularity required by our case law. See Gilmore, 417 Mass. at 723. Contrast Martin, 53 Mass. App. Ct. at 530, 532.

⁹ We are not persuaded by the plaintiff's attempt to invoke the "lulling exception" to the presentment requirement. The city timely asserted defective presentment as an affirmative defense, and the plaintiff points to no evidence in the record to support this claim. See Rodriguez, 472 Mass. at 1010 n.3 (rejecting plaintiff's claim that city had waived presentment requirement in view of city's raising defective presentment as affirmative defense and thus putting plaintiff on notice thereof); Garcia, 65 Mass. App. Ct. at 111 (lulling requires that defendant "affirmatively indicate that the presentment requirement has been met or is waived" and evidence did not support such conclusion).