



The Court of Appeals this week held that the City of Albany's "SeeClickFix" electronic notice system, through which residents could point out road defects and the like, was sufficient prior written notice to raise a question of fact for trial, in a plaintiff's personal injury suit. Following the Court's decision, **the City almost immediately took down the site**, showing that legal liability can often outweigh residents' ease of use and just how quickly the Court's opinions can have practical impacts to our everyday lives (though not necessarily in this case, good ones). Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

TORTS, PRIOR WRITTEN NOTICE, MUNICIPAL ELECTRONIC NOTIFICATION SYSTEM

Calabrese v City of Albany, 2024 NY Slip Op 06289 (Ct App Dec. 17, 2024)

Issue: May a municipality's electronic notification system for the identification of road and other defects constitute prior written notice for purposes of tort liability?

Facts: "Plaintiff was injured when he lost control of his motorcycle on Lark Street in the City of Albany. He brought this lawsuit claiming that the accident was caused by a road defect that the City knew about and had failed to repair." The City maintains an electronic system for reporting such defects called "SeeClickFix." When reports are made, they are filtered by department and then transferred to the particular department's employees for handling. "Reports of road defects go to [Albany's Department of General Services], the agency responsible for road maintenance. Users may provide a description of the defect, its location, and photographs of the condition. Various City officials, including the DGS Commissioner, have encouraged the public to report road defects through SCF. At the same time, presumably anticipating potential liability for unaddressed road defects, the City requires SCF users to accept as a term of use the disclaimer that 'use of this system . . . does not constitute a valid notice of claim nor valid prior written notice as established under . . . state and local law.'" On the parties' cross motions for summary judgment, Albany argued that it did not have prior written notice of the defect that caused the plaintiff's injuries, as required by its prior written notice law, and thus the claim should be dismissed. Plaintiff responded that the SCF system was sufficient prior written notice to raise a question of fact. Supreme Court denied the cross motions, agreeing that "that several issues of fact precluded summary judgment, including which of the complaints were 'based upon verbal rather than written communications,' whether the defects described in the S[CF] notifications were the same as, or were otherwise related to, the roadway depression that caused plaintiff's accident,' and 'whether the manner in which the City excavated, repaired and/or restored the roadway created or exacerbated the defective condition which allegedly caused plaintiff's accident.'" The Appellate Division, Third Department affirmed.

Holding: The Court of Appeals affirmed, agreeing with the courts below that "notices submitted electronically through SCF may satisfy the 'written notice' component of [Albany's prior written notice statute]. Electronic communications fall within the plain meaning of the word 'written.' They serve as objectively observable and tangible records that are functionally equivalent to writings inscribed in a physical medium. Indeed, the SCF system was the City's sole process for recording road defect reports, including each defect's reported location and the date and time each report was received by DGS, and the system did not route such reports through any third party, consistent with the policy underlying the prior written notice requirement. Moreover, any ambiguity in what constitutes a writing under the statute must be strictly construed against the City. We therefore hold that a report typed into SCF by a user and then transmitted to DGS is a 'written' communication." The reports were also appropriately routed to the designee of the Commissioner of DGS, which also satisfied Albany's statute. Thus, the Court sent the case back to resolve those questions of fact at trial.

DISCRIMINATION, MARITAL STATUS

Matter of McCabe v 511 W. 232nd Owners Corp., 2024 NY Slip Op 06290 (Ct App Dec. 17, 2024)

Issue: May a long-term romantic partner who has not registered as a domestic partner qualify as a spouse for purposes of the prohibition against discrimination on the basis of marital status under the New York City Human Rights Law?

Facts: "Petitioner Maryanne McCabe resided for 13 years in a New York City cooperative building with her 'long-time romantic partner,' David Burrows. Upon Burrows' death, he willed his real property, including his unit in the building, to petitioner, who then sought to acquire his lease and shares under a lease provision authorizing an automatic transfer to a shareholder's 'spouse.' The cooperative board declined to treat petitioner as a spouse but offered to consider whether she could retain the lease and shares under a clause covering a shareholder's family member." Ultimately, the board decided that petitioner did not qualify under the lease terms for a transfer of the lease.

Petitioner then filed a CPLR article 78 proceeding to challenge the board's determination, arguing that it discriminated against her based on marital status in violation of the New York City Human Rights Law, the New York State Human Rights Law, and the Federal Fair Housing Act and Civil Rights Act of 1964. "Petitioner alleged that she was the 'equivalent of a spouse,' and that the board had discriminated against her because of her marital status by refusing to treat her as a spouse. The board responded that petitioner was not a spouse and thus not entitled to an automatic transfer of shares, and that although petitioner did not claim to be a family member, even if she were so considered, she had not established that she was financially responsible as required by the lease." Supreme Court dismissed the proceeding, holding that "the automatic transfer request had been denied not because petitioner was unmarried, but because she was unmarried to a particular person (Burrows), and that did not constitute marital status discrimination." The Appellate Division, First Department affirmed.

Holding: The Court of Appeals affirmed, holding that the board had not discriminated against petitioner based on "marital status," as that term has been interpreted. The Court explained, "the plain and ordinary meaning of 'marital status' is the social condition enjoyed by an individual by reason of his or her having participated or failed to participate in a marriage. Thus, the statute in effect says that employers may no longer decide whether to hire, fire, or promote someone because he or she is single, married, divorced, separated or the like." Although the NYCHRL was amended following the Court's initial interpretation of the term "marital status," it concluded that those amendments did not warrant altering the ordinary legal understanding of "marital status." "Black's Law Dictionary defines [the term 'marital status'] as 'the condition of being single, married, legally separated, divorced, or widowed.' Along the same lines is the general understanding: when one is queried about one's 'marital status,' the usual and complete answer would be expected to be a choice among 'married,' 'single,' etc. A plain reading of the term, then, is that marital status reflects the legal condition of being single, married, legally separated, divorced, or widowed. Marital status turns on whether an individual has participated or failed to participate in a marriage, and is distinct from the identity or situation of the individual's spouse." Thus, the Court concluded, petitioner could not succeed on her claim of marital status discrimination, because she only alleged discrimination based on the status of being unmarried to a particular person.

CasePrepPlus | December 20, 2024

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