

NEW YORK COURT OF APPEALS

Viruet v. City of New York

97 N.Y.2d 171, 763 N.E.2d 1143 (2001) · Decided November 20, 2001

SUMMARY

The New York Court of Appeals held that a notice of claim against the New York City Health and Hospitals Corporation may be served on the New York City Corporation Counsel under General Municipal Law § 50-e(3)(a). The court concluded that this service method is incorporated into the HHC Act and affirmed the Appellate Division's order, declining to follow contrary precedent.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Smith, J.; Chief Judge Kaye; Judge Levine; Judge Ciparick; Judge Wesley; Judge Graffeo; Judge Rosenblatt
JURISDICTION	New York
DECIDED	November 20, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order affirming denial of their motion to dismiss a dental-malpractice action for failure to serve a notice of claim on an officer or director of the New York City Health and Hospitals Corporation. The Appellate Division certified to the Court of Appeals the question whether it correctly affirmed Supreme Court.
STANDARD OF REVIEW	De novo statutory interpretation and review of an order denying a motion to dismiss; the relevant facts were undisputed.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of New York, New York City Health and Hospitals Corporation, Dr. Elizabeth McGee, Dr. John Parr, Dr. Doe v. Viruet

TOPICS

- service of process
- statutory interpretation
- legislative history
- municipal law
- civil procedure

PRACTICE AREAS

- civil procedure
- municipal law
- health law
- medical malpractice

QUESTIONS PRESENTED

1. Whether General Municipal Law § 50-e(3)(a), incorporated into the New York City Health and Hospitals Corporation Act by McKinney's Unconsolidated Laws of New York § 7401(2), permits service of a notice of claim against HHC on the Corporation Counsel.
2. Whether the service provision in General Municipal Law § 50-e(3)(a) conflicts with the HHC Act's provision referring to service on a director or officer of HHC, such that the HHC Act's override provision applies.

HOLDINGS

1. Service of a notice of claim on HHC may be effected by serving the New York City Corporation Counsel, because General Municipal Law § 50-e(3)(a) permits service on an attorney regularly engaged in representing the public corporation and that provision applies to HHC through McKinney's Unconsolidated Laws of New York § 7401(2).
2. General Municipal Law § 50-e(3)(a) is not inconsistent with McKinney's Unconsolidated Laws of New York § 7401(2), because it provides an alternative means of effecting service rather than displacing the HHC Act's designated officer-or-director recipient. Consequently, the HHC Act's override provision does not apply.

KEY QUOTATIONS

“The notice shall be served on the public corporation against which the claim is made by delivering a copy thereof personally, or by registered or certified mail, to the person designated by law as one to whom a summons in an action in the supreme court issued against such corporation may be delivered, or to an attorney regularly engaged in representing such public corporation.” (175)

“Insofar as service upon the Corporation Counsel is an alternative means of effecting service on HHC, section 50-e (3) (a) is not inconsistent with section 7401 (2), and therefore the override provision of section 7405 does not apply” (177)

FACTUAL BACKGROUND

Plaintiff sought damages for alleged dental malpractice by the New York City Health and Hospitals Corporation and an HHC doctor arising from treatment in 1993 and 1994 at the Segundo Ruiz Belvis Neighborhood Family Care Clinic. In October 1994, plaintiff served a notice of claim directed to the City, HHC, the clinic, and the doctors on the New York City Law Department and the City Comptroller. Plaintiff never served the notice on an HHC officer or director, although the Comptroller later directed plaintiff to appear for a General Municipal Law § 50-h hearing.

PROCEDURAL HISTORY

Plaintiff served a notice of claim directed to the City, HHC, the clinic, and the doctors on the New York City Law Department and the City Comptroller, but not on an HHC officer or director. Defendants moved to dismiss after commencement of the action. Supreme Court denied the motion, and the Appellate Division affirmed,

concluding that General Municipal Law § 50-e(3)(a) supplied the method of service and permitted service on the Corporation Counsel. The Court of Appeals affirmed and answered the certified question in the affirmative.

DISPOSITION

affirmed

CASES CITED

- Adkins v. City of New York, 43 N.Y.2d 346, 350
- Harlem Hosp. Ctr. Med. Bd. v. Hoffman, 84 A.D.2d 272, 280-281, appeal dismissed, 56 N.Y.2d 807
- Robles v. City of New York, 251 A.D.2d 485, lv granted, 93 N.Y.2d 802, appeal withdrawn, 94 N.Y.2d 783
- Altabe v. City of New York, 264 A.D.2d 373