



Friday Fast Facts

The Importance of Filing a Notice of Claim Against A Village: CPLR 9802 – A Trap for the Unwary Litigator

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Farrell Fritz Long Island Land Use and Zoning Blog

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By **John C. Armentano** on October 22, 2024

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Failing to file a notice of claim pursuant to **Civil Practice Law and Rules (“CPLR”) Section 9802** can become a trap for the unwary litigator who commences a hybrid proceeding-action (Article 78 claim(s) combined with plenary cause(s) of action) or a strict Article 78 proceeding against a village (see **South Nyack Police Assn. v Village of South Nyack, 229 AD3d 635 [2d Dept 2024]**).

Section 9802 provides that “no action shall be maintained against the village upon or arising out of a contract of the village” unless a notice of claim has been served. Although this language appears limited, Courts have interpreted it more broadly. Thus, a party bringing any action against a village must plead and prove, as a condition precedent to the litigation, that the party served a written verified notice of claim. The party’s failure to comply with this requirement can be fatal to the claim(s) asserted.

In *South Nyack Police Assn.*, police officers and their association commenced an Article 78 proceeding against the village, mayor, and trustees, seeking to compel the village to compensate the officers for unused sick time. The Supreme Court, Rockland County, converted the Article 78 proceeding into a plenary action for breach of contract and declaratory relief, and denied village’s motion to dismiss. Upon reargument, the Supreme Court granted the village’s motion to dismiss based on the officers’ and association’s failure to comply with Section 9802 (i.e. the officers and association failed to serve a notice of claim).

The officers and association appealed and argued that they sent a letter to the

mayor providing notice of their claims. The Appellate Division, Second Department, rejected this argument, affirmed dismissal, and held that the officers' and association's letter to the mayor did not constitute a notice of claim because it was not filed with the village clerk, was not verified, did not identify the "claimants," and did not refer to the contract claim (requisites for notices of claim).

Furthermore, in **BT Holdings, LLC v Village of Chester, 162 AD3d 881 (2d Dept 2018), lv denied, 32 NY3d 913 (2019)**, the Court was faced with a "hybrid proceeding pursuant to CPLR article 78 and action for a judgment declaring that Local Law No. 2 of 2016 of the Village of Chester (hereinafter Local Law No. 2) is void and of no force or effect." The village moved to dismiss the petition-complaint for failure to serve a notice of claim. The Supreme Court, Orange County, granted the motion to dismiss the Article 78 claims in the petition, but denied the motion to dismiss the plenary causes of action in the complaint. The village appealed the latter.

The Appellate Division, Second Department reversed, granted that portion of the motion to dismiss, and held "the notice of claim requirements of CPLR 9802 apply to the causes of action for declaratory relief" and that "the Supreme Court should have granted that branch of the defendants' motion which was pursuant to CPLR 3211(a) to dismiss the causes of action for a judgment declaring that Local Law No. 2 is void and of no force or effect."

Under New York law, notice of claim statutes are intended to foster early investigation of claims and to facilitate settlements prior to initiation of litigation. CPLR 9802 is clear: "no action shall be maintained against the village ... unless the same shall be commenced within one year after the cause of action therefor shall have accrued."

The Court of Appeals has held that a failure to plead and prove compliance with CPLR 9802 requires dismissal of the action (see *Salesian Society, Inc. v. Village of Ellenville*, 41 NY2d 521 [1977] [compliance with CPLR 9802 provisions is a condition precedent to be pleaded and proved by the one bringing suit]).

Notably, CPLR Section 9802 does not expressly require a notice of claim before bringing an Article 78 proceeding against a village where the claim(s) does not resound in contract or declaratory relief (see *Caggiano*, 44 AD2d 828 [2d Dept 1974] [before bringing an Article 78 proceeding to recover money seized by the police during an arrest, no notice of claim under this section is required]). Takeaway: when litigating against a village, file a notice of claim. Better safe than sorry.



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