

# Groninger v. Village of Mamaroneck: Prior Written Notice Laws Are Applicable to Municipal Parking Lots

By Kenneth E. Pitcoff and Anna J. Ervolina

In a significant win for every municipality in New York State, the Court of Appeals held that municipalities are entitled to prior written notice of defects located within municipally owned parking lots.

## New York's Prior Written Notice Laws

Prior written notice laws have been enacted by virtually every municipality in the State of New York and provide that a municipality cannot be held liable for injuries caused by a hazard located on a "street, highway, bridge, culvert, sidewalk or crosswalk" unless the municipality has been notified in writing of the hazardous condition and has had a reasonable time to cure the condition.

The Court of Appeals has long recognized that prior written notice laws are "a valid exercise of legislative authority" and that such laws "[comport] with the reality that municipal officials are not aware of every dangerous condition on its streets and public walkways, yet [impose] responsibility for repair once the municipality has been served with written notice of an obstruction or other defect, or liability for the consequences of its nonfeasance, as the case may be."<sup>1</sup>

Only two exceptions to the prior written notification laws have been recognized by the Court of Appeals, namely, where the municipality created the defect through an affirmative act of negligence, and, where a "special use" confers a special benefit upon the municipality.<sup>2</sup>

## Background of Groninger v. Village of Mamaroneck

In *Groninger v. Village of Mamaroneck*, the Court of Appeals had to decide whether prior written notice laws applied to parking lots owned by municipalities. Plaintiff, Margaret Groninger, sued the Village of Mamaroneck for personal injuries she allegedly sustained after slipping and falling on ice located in a parking lot owned by the Village.

The Village moved to dismiss Groninger's Complaint on the ground that it never received written notice of the ice condition prior to Groninger's accident as required by Village Law § 6-628.<sup>3</sup>

Groninger opposed the Village's motion arguing that prior written notice was not required when the defective

condition exists in a parking lot because a parking lot is not one of the six locations enumerated in Village Law § 6-628, namely, a street, highway, bridge, culvert, sidewalk or crosswalk.

The Supreme Court, Westchester County, found that prior written notice was required and granted the Village's motion and dismissed the Complaint.<sup>4</sup>

Groninger appealed to the Appellate Division, Second Department which affirmed the dismissal of the Complaint but certified to the Court of Appeals the question of whether its decision and order was properly made.<sup>5</sup>

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## The Parties' Arguments Before the Court of Appeals

In support of her position that Village Law § 6-628 was not applicable to parking lots, Groninger relied on the Court of Appeals case *Walker v. Town of Hempstead*,<sup>6</sup> which involved a plaintiff who was injured on a defect at a paddleball court and held that the Town could not require prior written notice of a defect in a paddleball court because a paddleball court was not a location that was specifically enumerated in the prior written notice statute. Groninger argued that since the Court of Appeals struck down the municipal ordinance at issue in *Walker* which attempted to require prior written notice not only at paddleball courts but also at parking fields, that prior written notice cannot be required for municipal parking lots because there is no difference between a parking field and a parking lot.

Although Groninger acknowledged that every appellate department in New York had consistently concluded that prior written notice laws applied to parking lots, Groninger argued that the lower appellate court decisions were inconsistent with the Court of Appeals' decision in *Walker*.

The Village countered that Groninger's analysis was without merit because it ignored the Court of Appeals' decision in *Woodson v. City of New York*,<sup>7</sup> which was decided five years after *Walker* and rejected the very same arguments advanced by Groninger.

In *Woodson*, the plaintiff fell on a defective concrete stairway leading from a sidewalk up to a municipal park. Like Groninger, the plaintiff in *Woodson* argued that prior written notice was not required because the stairway was not specifically enumerated in the notice statute which was explicitly limited to "streets, highways, bridges, culverts, sidewalks and crosswalks" and that the stairway was categorically different from a sidewalk. The Court of Appeals, however, rejected *Woodson's* argument and held that prior written notice was required.

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In so ruling, the Court of Appeals explained that its decision was not inconsistent with its decision in *Walker* "because [the] paddleball court [in *Walker*] is functionally different from each of the six locations enumerated in General Municipal Law 50-e (4). The stairway in this case functionally fulfills the same purpose that a standard sidewalk would serve on flat topography, except that it is vertical instead of horizontal." Thus, the Village argued that the Court of Appeals, post-*Walker*, intentionally expanded the scope of prior written notice laws to include the "functional equivalents" of the locations specifically enumerated in the statute.

The Village further argued that a "parking lot" is the functional equivalent of a "highway" because it falls within the definition of a "highway," which Vehicle and Traffic Law § 118 defines as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." Since a highway is specifically listed in the prior notice laws, such law extends to parking lots.

### **Court of Appeals' Decision**

In a 4-3 decision,<sup>8</sup> the Court of Appeals expressly rejected Plaintiff's argument and affirmed the dismissal of Plaintiff's Complaint. As argued by the Village, the Court of Appeals held that Plaintiff could not ignore its *Woodson* decision which was decided after *Walker* and required prior written notice be given of a defect found

at a location that functionally fulfilled the same purpose as a location named in the statute.

The Court of Appeals further adopted the Village's argument that a "parking lot serves the 'functional purpose' of a 'highway,' [and that] [a]s a result, the Village was entitled to notice and an opportunity to correct any defect before being required to respond to any claim of negligence with respect thereto."

### **Groninger's Considerable Significance**

Virtually every municipality in the State of New York has enacted a prior written notice law. Likewise, virtually every municipality in the State of New York owns parking lots. Thus, being entitled to prior written notice of defects in parking lots before liability can be imposed for injuries resulting from said defects is a tremendous benefit for municipalities.

Municipally owned parking lots serve the public good in a variety of ways. For instance, by providing potential customers with parking spaces, publicly owned parking lots support local businesses and attractions which in turn provide localities with revenue and help promote local economies by attracting customers and tourists to their locales. Also, publicly owned parking lots are a source of revenue in the case of metered parking lots. Without prior notice, municipalities would be forced to bear a crushing economic and logistical burden of monitoring public parking lots and defending against resultant litigation which would negatively impact local economies and be ultimately borne by already overburdened taxpayers.

*Groninger* is also noteworthy in light of the Court of Appeals December 2010 decision *San Marco v. Village/Town of Mount Kisco*<sup>9</sup> which chipped away at the protections afforded municipalities under the prior written notice law. The Court of Appeals long recognized that prior written notice laws do not shield a municipality from liability if the municipality created the defect through an affirmative act of negligence. Prior to *San Marco*, however, the "affirmative act of negligence" exception only applied if the municipality's affirmative act immediately resulted in the existence of a dangerous condition.<sup>10</sup> In *San Marco*, the Court of Appeals limited the protection afforded to municipalities and held that the "immediacy test" did not extend to hazards which are alleged to have been created by a municipality's negligent snow removal activities.

In contrast to *San Marco*, the Court of Appeals in *Groninger* recognized that a "municipality is not expected to be cognizant of every crack or defect within its borders"<sup>11</sup> and reaffirmed its commitment to upholding the legislative purpose of prior written notice statutes which is to shield municipalities from liability unless they are given an opportunity to cure known defects.

## Endnotes

1. See *Amabile v. City of Buffalo*, 93 N.Y.2d 471, 474-474, 693 N.Y.S.2d 77, 79 (1999).
2. *Id.* See also *Yarborough v. City of New York*, 10 N.Y.3d 726, 728, 853 N.Y.S.2d 261, 262 (2008) (once municipality establishes lack of prior written notice, plaintiff bears burden of demonstrating that either exception to prior written notice statutes applies).
3. Village Law § 6-628 and C.P.L.R. 9804 provide:

No civil action shall be maintained against the village for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed or for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any sidewalk, crosswalk, street, highway, bridge or culvert unless written notice of the defective, unsafe, dangerous or obstructive condition, or of the existence of the snow or ice, relating to the particular place, was actually given to the village clerk and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of or to cause the snow or ice to be removed, or the place otherwise made reasonably safe.
4. *Groninger v. Village of Mamaroneck*, 2008 WL 7907374 (Trial Order) (N.Y. Sup. Jul 22, 2008).
5. *Groninger v. Village of Mamaroneck*, 67 A.D.3d 733, 888 N.Y.S.2d 205 (2d Dept. 2009).
6. 84 N.Y.2d 360, 618 N.Y.S.2d 758 (1994).
7. 93 N.Y.2d 936, 693 N.Y.S.2d 69 (1999).
8. *Groninger v. Village of Mamaroneck*, \_\_\_ N.Y.2d \_\_\_, 2011 WL 2149504, 2011 N.Y. Slip Op. 04544 (June 2, 2011) (Opinion by Judge Pigott. Judges Graffeo, Read and Smith concur. Chief Judge Lippman dissents in an opinion in which Judges Ciparick and Jones concur).
9. *San Marco v. Village/Town of Mount Kisco*, 16 N.Y.3d 111, 919 N.Y.S.2d 459 (2010).
10. See *Yarborough v. City of New York*, 10 N.Y.3d 726, 853 N.Y.S.2d 261 (2008); *Oboler v. City of New York*, 8 N.Y.3d 888, 832 N.Y.S.2d 871 (2007).
11. *Gorman v. Town of Huntington*, 12 N.Y.3d 275, 279, 879 N.Y.S.2d 379, 381 (2009).

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