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Municipal Corporations—Notice in Indemnification Action Against Public Corporation

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use" of his vehicle and since the vendor-insured was not in fact the owner of the vehicle, the insurer could in no way be held liable under the policy.

In *Switzer v. Merchants Mutual Casualty Company*,[26] the vendor-insured was a conditional vendor who as a dealer was permitted, pursuant to statute,[27] to issue his own plates to the vendee for temporary use. However, for failure to comply with the exact terms of the statute, he also had been held, in a prior proceeding,[28] to be estopped from denying ownership for purposes of determining his liability to the injured party. In the instant case there was no attempt to carry over this estoppel to the insurance company, but rather the insurer was sought to be held for the liability of the vendee, on the ground that the vendee was an "insured" under the policy. Since the policy in the *Switzer* case was issued to an automobile dealer, as contrasted to an individual owner in the *Guthiel* case, the Court took a broader view of the risks assumed by the insurer under such policy. Since the vendee's use was with the "permission" of the dealer, the vendee was deemed to be an "insured" under the policy, thus rendering the insurer liable regardless of the dealer's liability.

Thus, in the name of contract construction, the Court has apparently endeavored to set limits upon the insurer's liability. However, one may wonder how realistic these limits are in view of our policy of compulsory liability insurance. It would appear that while the risk that a dealer will permit a vendee to use his plates is apparent, the risk that an individual owner will be held liable by estoppel under similar circumstances is not so far removed as to warrant the distinction drawn by the Court.

MUNICIPAL CORPORATIONS

Notice In Indemnification Action Against Public Corporation

The General Municipal Law requires, as a condition precedent to a law suit against a public corporation, that notice be given to the public corporation within 90 days after the claim arises.[1] In *Valstrey Service Corporation v. Board of Election, Nassau County*, the Court stated in a per curiam opinion that notice was not necessary in a third-party indemnification action against a public corporation.[2]

26. 2 N.Y.2d 575, 161 N.Y.S.2d 867 (1957).
27. N.Y. VEHICLE AND TRAFFIC LAW §63.
28. Switzer v. Aldrich, 307 N.Y. 56, 120 N.E.2d 159 (1954).

1. N.Y. GENERAL MUNICIPAL LAW §50(e)(1).
2. 2 N.Y.2d 413, 161 N.Y.S.2d 52 (1957).

The petitioner, who was the defendant in a personal injury action, was seeking indemnification pursuant to section 193(a) of the Civil Practice Act which permits a defendant to implead a third party in the original law suit. Since the petitioner was served a summons over 90 days after the claim arose, it made an application to the Supreme Court for an extension of the time limit under section 50(e)(5) of the General Municipal Law. That section gives the court discretion to extend the time for notice for a reasonable period after 90 days. However in order to exercise this discretion, the applicant must be an infant or mentally or physically incapacitated.[3] The Supreme Court ruled that these were the only conditions upon which the application could be granted. This was affirmed by the Appellate Division.[4] The Court of Appeals held that the lower court was correct in denying the application and further stated as dictum that notice was not necessary in a third-party indemnification action.

The Court of Appeals gave no arguments to sustain this position but it seems to have made a valid assumption. Section 50(e) of the General Municipal Law makes no provision for a third-party action and the legislative intent of the statute is to give the public corporation adequate opportunity to investigate the facts while readily available.[5]

"A statute requiring that notice of claim be given prior to institution of action against a public corporation should be construed in the light of its underlying purpose and such a statute is not a trap to catch the unwary or ignorant."[6]

If notice is required and section 193(a) of the Civil Practice Act is barred, the purpose or intent of section 50(e) of the General Municipal Law would be defeated. The petitioner would have to wait for a judgement against it before it could give a notice of an indemnity claim. This could take many years and the public corporation would have a very difficult time acquiring facts. Thus, the statute would operate as a hindrance, rather than an aid to public corporations.

Municipal Disposal Of Garbage—Governmental Function

In *Nehrbas v. Incorporated Village of Lloyd Harbor*[7] the Court held that a village was not restricted by its zoning restrictions when using residentially zoned land for the purpose of storing vehicles used by the police force, highway

3. Rudolph v. New York, 191 Misc. 947, 77 N.Y.S.2d 788 (Sup. Ct. 1947).
4. 1 A.D.2d 976, 151 N.Y.S.2d 86 (2d Dep't 1956).
5. Teresta v. City of New York, 304 N.Y. 440, 443, 108 N.E.2d 397, 398 (1952); Sweeney v. City of New York, 225 N.Y. 271, 273, 122 N.E. 243, 244 (1919).
6. Sandak v. Tuxedo Union School District No. 3, Town of Tuxedo, 308 N.Y. 226, 124 N.E.2d 295 (1954).
7. 2 N.Y.2d 190, 159 N.Y.S.2d 145 (1957).