



Class Actions Permitted Under Massachusetts Tort Claims Act

Plaintiff Janice Magliacane (“Magliacane”), a homeowner in the city of Gardner (the “City”), commenced a putative class action against the City and others, alleging that they were negligent and created a nuisance in supplying corrosive water to the city’s residents. Magliacane alleged that she had to repeatedly repair her hot water heating system due to corrosion of its copper heating coils. Magliacane’s complaint alleged that the City took active steps to conceal the fact that its conduct contributed to the corrosion.

The Superior Court allowed a motion to dismiss based on a failure to make timely presentment under the Massachusetts Tort Claims Act (“MTCA”). The Massachusetts Supreme Judicial Court (“SJC”) reversed the dismissal and expressly applied the doctrine of fraudulent concealment to presentment under the MTCA. The SJC also rejected the City’s argument that the presentment letter needed to identify each legal claim included in the complaint, where the claims were all based on the same facts.

In the course of its decision, the SJC discussed the availability of a class action remedy under the MTCA. The SJC noted that, “somewhat surprisingly,” it had yet to address the question of whether plaintiffs may bring a class action under the MTCA. The SJC went on to state that “a class action may be brought against a public employer under the act.” The SJC then rejected the City’s argument that the members of a class must individually present their claims to the defendant, explaining that such a requirement would, as a practical matter, eliminate class actions under the MTCA. The court drew an analogy to the Chapter 93A demand letter context, where individual class members need not make separate demands for relief.

The SJC’s decision in *Magliacane* opens the door to future class action suits against municipalities under the MTCA. It is now clear that municipal residents may seek classwide relief without having to make individual presentment of their claims, and they may rely on the doctrine of fraudulent concealment if they can allege that the municipality took steps to conceal their cause of action.

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OCM Law 1 Van De Graaff Dr. Burlington, Massachusetts 01803 United States (781) 359-9000