

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-495

COURTNEY RAMOS

vs.

CITY OF LEOMINSTER & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Courtney Ramos brought this action against the city of Leominster (city) and one of its police officers, alleging that she sustained personal injuries as a result of the officer's negligent operation of a motor vehicle. After Ramos amended her complaint to remove the officer as a defendant, the city filed a pre-answer motion to dismiss pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974). A Superior Court judge granted the motion after finding that Ramos had failed to make a valid presentment of her claim as required by the Massachusetts Tort Claims Act, G. L. c. 258, § 4. Judgment entered for the defendants.² On appeal, Ramos claims that dismissal was improper

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² Although the judge entered judgment in favor of both the city and the police officer, because Ramos's amended complaint removed the officer as a defendant, that aspect of the judgment is not at issue here.

since her amended complaint plausibly suggested that she was entitled to the "actual notice" exception to the presentment requirement. Alternatively, Ramos claims that the judgment must be vacated because the judge considered matters outside the pleadings on the motion to dismiss. We affirm.

Discussion. 1. Actual notice exception. Our review of a motion to dismiss pursuant to Mass. R. Civ. P. 12 (b) (6) is de novo. See Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107, 116 (2016). We inquire here whether the amended complaint is sufficient to "raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Prior to filing a civil tort suit against a public employer, G. L. c. 258, § 4, requires that a plaintiff "shall have first presented his claim in writing to the executive officer of such a public employer within two years after the date upon which the cause of action arose." The purpose of the statute is to assure that the official with the authority to settle a claim is afforded "an adequate opportunity to investigate the circumstances surrounding that claim in order to determine whether an offer of settlement should be made" (citation omitted). Lopez v. Lynn Hous. Auth., 440 Mass. 1029,

1030 (2003). Although "[p]resentment must be made in strict compliance with the statute" (quotation and citations omitted), Gilmore v. Commonwealth, 417 Mass. 718, 721 (1994), "[a]n exception to the general rule exists where the record shows that the proper person had actual notice of the claim." Garcia v. Essex County Sheriff's Dep't, 65 Mass. App. Ct. 104, 107 (2005).

The exception, however, is narrow and is only applied where, despite defective presentment, the statutory purpose is determined to have been fulfilled. See, e.g., Lopez, supra at 1030-1031 (although presentment letters were not addressed to the appropriate person, statutory purpose was fulfilled where executive director had actual notice as demonstrated by his direct response to the claim). Critical to this analysis is whether the appropriate official had knowledge of the legal basis of a plaintiff's claim or was provided with "a detailed description of the facts from which to infer the basis of the claim." Garcia, 65 Mass. App. Ct. at 109-110. See Rodriguez v. Somerville, 472 Mass. 1008, 1010-1011 (2015). Without notice of the legal basis of a claim, an official cannot "meaningfully consider the claim or properly respond." Id. at 1011.

Ramos contends that her amended complaint and exhibits attached thereto contained allegations that, if taken as true, plausibly suggest that the mayor's knowledge of the incident was sufficient to entitle Ramos to the actual notice exception.

Even accepting the allegations in Ramos's amended complaint as true, however, the record is bare of facts suggesting that the mayor had knowledge of the legal basis of Ramos's claim or sufficient facts to infer a legal basis. Although Ramos alleged in her amended complaint that "[u]pon information and belief, the Mayor of Leominster had actual knowledge of this incident and the details of the same," nowhere in her complaint does she allege that the mayor also had knowledge of a legal basis upon which she sought to hold the city liable. This allegation, therefore, is insufficient to suggest that the mayor had enough information such that he could investigate the claim or meaningfully respond, thus fulfilling the statutory purpose of presentment. See Rodriguez, 472 Mass. at 1011.

Ramos also relies on letters she and her counsel allegedly sent to the office of the city treasurer and the police department, respectively, for the proposition that she is entitled to the actual notice exception. In addition to being sent to improper parties, the letters contain no mention of a legal claim and provide far too little detail from which an official could infer a legal basis for such a claim. The letters, therefore, are likewise insufficient to suggest that Ramos fulfilled the purpose of the presentment statute. See Garcia, 65 Mass. App. Ct. at 109-111.

In support of its pre-answer motion to dismiss, the city submitted affidavits from the city's mayor and clerk, who both stated that they never received notice of Ramos's claim. Ramos urges us to also consider the mayor and clerk's affidavits and to draw the inference that they had actual knowledge of the incident from their failure to deny the same in the affidavits. Regardless of whether our review of the affidavits is proper,³ consideration of the affidavits would not alter our analysis. Like the allegations in the amended complaint, this argument does not speak to the officials' knowledge of a legal basis for Ramos's claim and is thus unavailing. Because Ramos has failed to allege facts that suggest that the mayor had actual notice of her legal claim, the conclusion that the statutory purpose of G. L. c. 258, § 4, has been fulfilled despite defective presentment is without any support. There was thus no error in allowing the city's motion to dismiss.

2. Matters outside the pleadings. Ramos also contends that the judge erred by entering an order on a motion to dismiss where he considered matters outside the pleadings, namely, the affidavits of the mayor and clerk.

³ Although review of the allowance of a motion to dismiss is limited to the pleadings and exhibits attached thereto, Lipsitt v. Plaud, 466 Mass. 240, 241 (2013), the judge below did not exclude the affidavits from the motion to dismiss record.

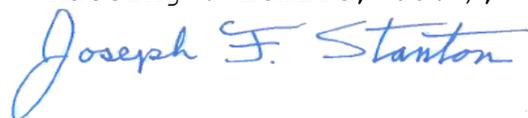
Ramos is correct that "[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Mass. R. Civ. P. 12 (c), 365 Mass. 754 (1974). "Where the failure to provide such an opportunity results in prejudice to a party, such a failure can constitute reversible error." Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008).

Here, Ramos fails to articulate, let alone demonstrate, any prejudice. While she argues that a legitimate issue remains regarding whether the mayor had actual notice of her claim, she has identified no specific material or information she was foreclosed from presenting. The total lack of evidence supporting the assertion that the mayor had knowledge of a legal claim further indicates that additional discovery would prove futile. The fact that the judge did not treat the motion as one

for summary judgment, therefore, does not warrant reversal.

Judgment affirmed.

By the Court (Green, C.J.,
Massing & Lemire, JJ.⁴),



Clerk

Entered: April 15, 2020.

⁴ The panelists are listed in order of seniority.