

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D22747  
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Submitted - February 27, 2009

WILLIAM F. MASTRO, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

2008-10843

DECISION & ORDER

Robert Lee Smith, respondent, v County of  
Suffolk, et al., appellants.

(Index No. 17115/08)

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Christine Malafi, County Attorney, Hauppauge, N.Y. (Christopher A. Jeffreys of  
counsel), for appellants.

Harold Chetrick, P.C., New York, N.Y., for respondent.

In an action to recover damages for assault, abuse of process, malicious prosecution,  
and intentional infliction of emotional distress, the defendants appeal, as limited by their brief, from  
so much of an order of the Supreme Court, Suffolk County (Sgroi, J.), dated September 19, 2008,  
as denied those branches of their motion pursuant to CPLR 3211 and General Municipal Law § 50-e  
which were to dismiss the second and third causes of action alleging abuse of process and malicious  
prosecution, respectively.

ORDERED that the order is affirmed insofar as appealed from, with costs.

General Municipal Law § 50-e requires that a notice of claim be served within 90 days  
after a tort claim arises against a municipality (*see* General Municipal Law § 50-e[1][a]; *Casias v City  
of New York*, 39 AD3d 681, 682; *Matter of Narcisse v Incorporated Vil. of Cent. Islip*, 36 AD3d 920,  
920; *Bovich v East Meadow Pub. Lib.*, 16 AD3d 11, 16; *Bluitt v Ridge Fire Dist.*, 230 AD2d 814,  
815). “Timely service of a notice of claim is a condition precedent to a lawsuit sounding in tort and  
commenced against a municipality” (*Matter of National Grange Mut. Ins. Co. v Town of Eastchester*,  
48 AD3d 467, 468; *see Knox v New York City Bur. of Franchises & N.Y. City*, 48 AD3d 756, 757).

April 14, 2009

Page 1.

SMITH v COUNTY OF SUFFOLK

Contrary to the defendants' contention before the Supreme Court, the plaintiff served a timely notice of claim pursuant to General Municipal Law § 50-e with respect to the second and third causes of action alleging abuse of process and malicious prosecution, respectively.

We have not considered the defendants' remaining contentions which were improperly raised for the first time in their reply papers before the Supreme Court (*see Medugno v City of Glen Cove*, 279 AD2d 510) or on appeal (*see Ali v Richmond Indus. Corp.*, 59 AD3d 469; *Kalra v Kalra*, 57 AD3d 947; *Robinson v Way*, 57 AD3d 872; *Provident Bank v Giannasca*, 55 AD3d 812).

MASTRO, J.P., DICKERSON, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court