

# BOND

## MUNICIPALITIES INFORMATION MEMO

MAY 10, 2022

### Courts Clarify Elements Of Special Duty Doctrine and Malicious Prosecution

Recently, the New York State Court of Appeals and the United States Supreme Court each clarified municipal liability stemming from law enforcement activities in the context of state law municipal negligence claims and federal claims for malicious prosecution arising under 42 U.S.C. § 1983.

First, in *Ferreira v. City of Binghamton*, – N.Y.3d –, 2022 N.Y. Slip. Op. 01953 (March 22, 2022) the New York State Court of Appeals held that a plaintiff “may establish a special duty when a municipality, acting through its police force, plans and executes a no-knock search warrant at a person’s home, and that such a duty runs to the individuals within the targeted premises at the time the warrant is executed.” In other words, the execution of a no-knock warrant alone appears to satisfy the special duty standard applied to municipal negligence claims within New York.

In *Ferreira*, Binghamton’s police department obtained a no-knock search warrant for the suspected residence of a dangerous felony suspect. The police subsequently performed surveillance to confirm the suspect’s connection to the residence. The next morning, a SWAT team conducted a “dynamic entry” (i.e., a surprise entry) into the residence. At this time, the plaintiff (who was not the suspect), was sleeping on the couch in the living room, unarmed. Upon the SWAT team’s entry, the plaintiff was shot in the stomach and suffered serious injuries. It is disputed whether the plaintiff left the couch or whether the plaintiff had an Xbox controller in his hand at this time.

The plaintiff subsequently initiated an action against the city and the city police department alleging, among other theories of liability, negligence stemming from the city’s breach of a special duty. Following trial, the District Court for the Northern District of New York dismissed the plaintiff’s negligence claim, finding a reasonable jury could conclude the police’s “‘mistake and the shooting that resulted’ did not violate any applicable standard of care” and that the plaintiff failed to establish that the city owed plaintiff a special duty.

The plaintiff appealed. On appeal, the Second Circuit found conflicting precedents as to whether the special duty doctrine had been satisfied and certified that question to the New York State Court of Appeals.

The New York State Court of Appeals explained that such analysis begins with determining whether the complaint of conduct stems from a governmental or proprietary function. If a governmental function, a plaintiff is required to establish the existence of a special duty towards the plaintiff to recover. The exercise of police powers – i.e., the planning and execution of a no-knock warrant – is a quintessential governmental function. The Court held that the special duty burden is not lessened when the injury is inflicted by municipal actors such as police officers.

The Court also held that “when police plan and execute a no-knock search warrant, they effectively take control of the targeted premises, knowingly creating an unpredictable and potentially dangerous condition at a particular premises.” Further, “[t]he execution of a no-knock warrant is a charged and volatile situation undertaken at the direction and supervision of municipal actors, who plan and execute the warrant and who can reasonably foresee the steps to avoid many of the risks occasioned by uncertain reactions to chaotic events when the police forcefully cross the threshold of someone’s home.” In such circumstances, “the Court concluded the police take positive control of a known and dangerous condition, creating a special duty under the third situation recognized by this Court.”

In sum, the execution of no-knock warrants may lead to greater liability towards municipalities as the special duty doctrine appears to be satisfied in most, if not all instances where no-knock warrants are executed.

Next, in *Thompson v. Clark*, 142 S. Ct. 1332 (April 4, 2022), the United States Supreme Court clarified the necessary elements for a malicious prosecution claim by rejecting the requirement established by the Second Circuit and other federal courts of appeal that a plaintiff demonstrate an affirmative indication of innocence to present such a claim.

In *Thompson*, EMTs and police officers removed the plaintiff’s one-week-old daughter from the plaintiff’s apartment after the plaintiff’s sister-in-law falsely reported the plaintiff was sexually abusing his daughter. When the police arrived at the plaintiff’s residence, the plaintiff advised they could not enter without a warrant. Ignoring plaintiff’s refusal, police entered the apartment and handcuffed the plaintiff. The police subsequently charged the plaintiff with obstructing governmental administration and resisting arrest. Prior to trial, the prosecution moved to dismiss these charges without explaining why they sought to dismiss the charges, and the judge, in turn, dismissed the case without any explanation as to why the case was being dismissed.

The plaintiff subsequently sued the police officers for, among other theories of liability, malicious prosecution under the Fourth Amendment pursuant to 42 U.S.C. § 1983. Within the Second Circuit, to prevail on such a claim, the plaintiff had to establish his criminal prosecution ended “with some affirmative indication of his innocence.” Because neither the prosecution nor the judge in his criminal action explained why the criminal charges were dismissed, the plaintiff could not meet this test and, accordingly, the Second Circuit dismissed plaintiff’s malicious prosecution claim.

The Supreme Court rejected the Second Circuit’s analysis and reinstated the plaintiff’s claim for malicious prosecution. The Supreme Court held that a malicious prosecution claim under the Fourth Amendment is comprised of three elements: “(i) the suit or proceeding was ‘instituted without any probable cause’; (ii) the ‘motive in instituting’ the suit ‘was malicious,’ ... and (iii) the prosecution ‘terminated in the acquittal or discharge of the accused,’” i.e., “a favorable termination of the underlying criminal prosecution.”

The question, however, was whether a favorable termination results from the mere dismissal of criminal proceedings, or whether a favorable termination requires something more, such as an affirmative indication of innocence. To resolve this dispute, the Supreme Court looked to the law surrounding malicious prosecution as it existed in 1871 – the year 42 U.S.C. § 1983 came into existence. At that time, there appeared near unanimity that the dismissal of criminal charges satisfied the favorable termination element. As a result, “a plaintiff could maintain a malicious prosecution claim when, for example, the prosecutor abandoned the criminal case or the court dismissed the case

without providing a reason.” Indeed, the Supreme Court found “[s]everal courts explicitly added [] that a favorable termination did not require an acquittal or dismissal accompanied by some affirmative indication of innocence.”

Ultimately, the Supreme Court held that “a Fourth Amendment claim under § 1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that the criminal prosecution ended without conviction.”

For any questions about this issue, please feel free to contact [Kevin Cope](#), [Charles Grieco](#) or any attorney in [Bond’s Municipalities practice](#) or the attorney at the firm with whom you are regularly in contact.

