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Lawrence I. Hollander

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right" he does not have, but this is the result of the decision in the instant case.

Lawrence I. Hollander

STATUTE OF LIMITATIONS—DISABILITIES AS TOLLING LIMITATION PERIOD

A city ordinance provides that "no suit shall be maintained against the city . . . for any tort unless . . . written notice of such damage was, within thirty (30) days after receiving of the injury alleged given to the city attorney . . ."¹ In suit for personal injury caused by the negligence of a city employee, the city pleaded notice had not been given within the time allowed. Plaintiff requested permission to show that she was unconscious as a result of her injury for the full thirty day period, and could not fulfill the requirement as to notice. *Held*, one rendered unconscious by an act charged to have resulted from the negligence of the city, and who remains unconscious as a result of that act for the full period allowed for the giving of notice will not be precluded from recovery because of failure to comply with the statute. *City of Miami Beach v. Alexander*, 61 So. 2d 917 (1952).

In many instances limitation statutes contain saving clauses or exceptions in favor of persons under physical or mental disability which toll the statute until the disability is removed.² In recent years the courts have loathed to interpose exceptions not expressly made by the legislature,³ however reasonable or equitable such exceptions may seem.⁴ The courts feel that such conduct would invade and obstruct the function and purpose of the legislative branch of government.⁵ The result of this attitude is to bar a person from maintaining an action if he fails to give notice within the prescribed period regardless of his disability.⁶

1. Miami Beach Code § 45 (1950).

2. *Nesbit v. Topeka*, 87 Kan. 394, 124 Pac. 166 (1912); *Stoliker v. Boston*, 204 Mass. 522, 90 N.E. 927 (1910); *Ray v. St. Paul*, 44 Minn. 340, 46 N.W. 675 (1890); *Kunkel v. St. Louis*, 163 S.W.2d 1016 (Mo. 1942); *Randolph v. City of Springfield*, 302 Mo. 33, 257 S.W. 449 (1923); *Chouteau v. Hoss*, 118 Okla. 76, 246 Pac. 844 (1926); *Gonyeau v. Milton*, 48 Vt. 172 (1876); *Born v. Spokane*, 27 Wash. 719, 68 Pac. 386 (1902).

3. *Barret v. Mobile*, 129 Ala. 179, 30 So. 36 (1901); *Williams v. Jacksonville*, 118 Fla. 671, 160 So. 15 (1935); *Buss v. Kemp Lumber Co.*, 23 N.M. 567, 170 Pac. 54 (1918); *Rowray v. McCarthy*, 48 Wyo. 108, 42 P.2d 54 (1935).

4. *Bull v. United States*, 295 U.S. 247 (1935); *Williams v. Jacksonville*, 118 Fla. 671, 160 So. 15 (1935); *Butler v. Craig*, 27 Miss. 628 (1854); *Buss v. Kemp Lumber Co.*, 23 N.M. 567, 170 Pac. 54 (1918).

5. *Williams v. Jacksonville*, 118 Fla. 671, 160 So. 15 (1935); *Federal Crude Oil Co. v. Yount-Lee Oil Co.*, 73 S.W.2d 969 (Tex. Civ. App. 1934), *cert. denied*, 295 U.S. 741 (1935); *Pietsch v. Milbrath*, 123 Wis. 647, 101 N.W. 388 (1904).

6. *Johnson v. Fresno County*, 64 Cal. App.2d 576, 149 P.2d 38 (1944); *Reid v. Kansas City*, 195 Mo. App. 457, 192 S.W. 1047 (1917); *Haynes v. Seattle*, 83 Wash. 51, 145 Pac. 73 (1914); *Ransom v. South Bend*, 76 Wash. 396, 136 Pac. 365 (1913).

Other courts have recognized the manifest injustice of denying relief to an injured person who, because of his incapacity as a direct result of the injuries received, could not give the required notice within the time allowed.⁷ It has been said that the requirement of notice necessarily presupposes the existence of an individual capable of giving it.⁸ Any other construction would be contrary to every instinct of humanity, and surely not within the legislative intent.⁹

The Florida Supreme Court has in the past interpreted statutes as herein involved with considerable strictness.¹⁰ However, in the instant case the court is departing from this view and refers to the circumstances involved as constituting a narrow exception. The reason for this exception is that if the plaintiff can prove she was unconscious for the full period she could not have notified the city herself, nor could she authorize anyone else to do so.¹¹

The court in the noted case undoubtedly arrived at an equitable decision. However, the court is indulging in a dangerous policy of invading the legislative domain. The Florida Supreme Court has in the past said that when the statute contained an express exception it would not write into the law other exceptions, nor create by judicial fiat a reason for tolling a limitations statute.¹² In a decision subsequent to the noted case, the Court held that, in the absence of a saving clause, a statute of limitations runs against all persons, *whether under a disability or not*.¹³ That the ends of justice might be better served by making exceptions in cases such as in the instant one is unquestionable, but the making of such exceptions is solely a prerogative of the legislature, not the court.

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7. *Webster v. Beaver Dam*, 84 Fed. 280 (C.C.E.D. Wis. 1898); *Birmingham v. Weston*, 233 Ala. 563, 172 So. 643 (1937); *Schulstad v. San Francisco*, 74 Cal. App.2d 785, 168 P.2d 68 (1946); *Oran v. Kraft-Phenix Cheese Corp.*, 324 Ill. App. 463, 58 N.E.2d 731 (1944); *Stoliker v. Boston*, 204 Mass. 522, 90 N.E. 927 (1910); *Lazich v. Belanger*, 105 P.2d 738 (Mont. 1940); *Kunkel v. St. Louis*, 349 Mo. 1121, 163 S.W.2d 1014 (1942); *Petition of Polk*, 188 Misc. 727, 71 N.Y.S.2d 294 (Sup. Ct. 1947); *Webster v. Charlotte*, 222 N.C. 321, 22 S.E.2d 900 (1942); *Wichita Falls v. Geyer*, 170 S.W.2d 615 (Tex. Civ. App. 1943); *Ehrhardt v. Seattle*, 33 Wash. 664, 74 Pac. 827 (1903).

8. *Birmingham v. Weston*, 233 Ala. 563, 172 So. 643 (1937); *Green v. Port Jervis*, 55 App. Div. 58, 66 N.Y. Supp. 1042 (2d Dep't 1900); 17 McQUILLIN, MUNICIPAL CORPORATIONS § 48.06 (3d ed. 1950).

9. See *McCullum v. South Omaha*, 84 Neb. 413, 414, 121 N.W. 438, 439 (1909) (dissenting opinion).

10. *Miami Beach v. Alexander*, 61 So.2d 917, 918 (Fla. 1952); *Williams v. Jacksonville*, 118 Fla. 671, 160 So. 15 (1935).

11. *Miami Beach v. Alexander*, 61 So.2d 917, 918 (Fla. 1952).

12. *Dobbs v. Sea Isle Hotel*, 56 So.2d 341 (Fla. 1952).

13. *Faulk & Coleman v. Harper*, 62 So.2d 62 (Fla. 1952); *Smith v. Barnett*, 116 Fla. 454, 156 So. 478 (1934); *Gillespie v. Florida Mort. Co.*, 96 Fla. 35, 117 So. 708 (1928).