



Determining When Police Owe a "Special Duty" Beyond That Owed to Average Citizen

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As a general rule, a municipality cannot be held liable for injuries resulting from the failure to provide adequate police protection. However, a plaintiff can assert the “special relationship” exception to this rule by showing that (1) the municipality assumed an affirmative duty, through promises or actions, to act on the injured party’s behalf; (2) knowledge on the part of the municipality that inaction could lead to harm; (3) some form of direct contact between the municipality’s agents and the injured party; and (4) the party’s justifiable reliance on the municipality’s undertaking of this special duty. *Cuffy v. City of New York*, 69 N.Y.2d 255 (N.Y. 1987).

The First Department recently examined the final element, justifiable reliance, in *Valdez v. City of New York*, 901 N.Y.S.2d 166 (2010). The case began on July 19, 1996, when Felix Perez called his ex-girlfriend, Carmen Valdez, Bronx resident and mother of five-year-old twins, and threatened to kill her. Valdez left her apartment for her grandmother’s house, calling her local police precinct along the way to report the threat. Officer Torres of the 48th Precinct’s Domestic Violence Unit, who was aware that Ms. Valdez had previously obtained an order of protection against Mr. Perez, advised her not to worry and to return home as Mr. Perez would be immediately arrested.

Ms. Valdez took the police officer’s advice and returned to her apartment. Approximately 24 hours later, Ms. Valdez left her apartment to throw out the garbage. She was immediately accosted in the hallway by Mr. Perez, who shot her multiple times and left her seriously wounded.

Ms. Valdez commenced an action in Bronx County against the City of New York, asserting that the “special relationship” exception applied. The jury agreed, and in September 2008 Ms. Valdez was awarded \$10 million. The City appealed on the grounds that the plaintiff had failed to establish “justifiable reliance” on the City’s undertaking of this special duty.

The plaintiff had argued that she thought the arrest was going to be immediate because Officer Torres had advised her to “immediately” return to her apartment. However, she had also testified that she was expecting the officer to call her to let her know when Mr. Perez had been arrested, because they had called her in the past to confirm that they had served the order of protection on him. At trial, Ms. Valdez had conceded that when she opened the door of her apartment on July 20, 1996, she had not heard from Officer Torres (or any other officer) since she reported the threatening phone call 24 hours earlier. Further, she had not called the police precinct at any point to inquire as to the status of the arrest.

On appeal, the City argued (and the First Department agreed) that *Valdez* was factually indistinguishable from *Cuffy v. City of New York*, in which the Court of Appeals held that a verbal assurance on its own does not constitute a sufficient basis for a plaintiff’s justifiable reliance. In that case, a plaintiff landlord sought police protection when a tenant became abusive. The police advised that they would address the situation “first thing in the morning.” The following day, the tenant injured the plaintiff’s wife and son during an altercation. The Court of Appeals found that the plaintiff’s reliance on the police was not justified because he had seen no police activity outside his home during the time the police had indicated they would arrest the threatening tenant. In the *Valdez* decision, the court cited numerous cases echoing the rule in *Cuffy* that no special relationship exists when the undertaking of the duty is based on verbal assurances but there is no visible police action thereafter. *See Finch v. County of*

Saratoga, 758 N.Y.S.2d 220 (3rd Dep't, 2003) (plaintiff told that an officer would be there in an hour) and *Clark v. Town of Ticonderoga*, 737 N.Y.S.2d at 412 (3rd Dep't, 2002) (plaintiff told that the police would "keep an eye" on her).

The First Department found the facts in *Valdez* to be analogous to those in *Cuffy*, *Finch*, and *Clark* rather than the few cases in which courts did find justifiable reliance and thus a special relationship exception. See *Mastroianni v. County of Suffolk*, 668 N.Y.S.2d 542 (N.Y. 1997) (police car was stationed outside Plaintiff's home) and *Zibbon v. Town of Cheektowaga*, 382 N.Y.S.2d 152 (4th Dep't, 1976) (plaintiff told relatives there were police cars "all over the place"). The Court found that Ms. Valdez could not have justifiably relied on the police officer's statement because she had received no confirmation of Mr. Perez's arrest, nor had she seen any police presence in the area since her initial complaint. Finding that the plaintiff had failed to meet her burden of demonstrating justifiable reliance, the court overturned the \$10 million verdict against the City.