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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 06/21/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

BRENDA SCHWARTZ, a married woman, ) No. 1 CA-CV 11-0649  
)  
) DEPARTMENT C  
Plaintiff/Appellant, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication  
) Rule 28, Arizona Rules  
CITY OF SCOTTSDALE, a public ) of Civil Appellate  
entity, ) Procedure)  
)  
Defendant/Appellee. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV 2011-004608

The Honorable Sam J. Myers, Judge  
The Honorable Mark H. Brain, Judge

**AFFIRMED**

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Knapp & Roberts P.C. By David L. Abney	Scottsdale
Howard Schwartz Esq. By Howard Schwartz Co-counsel for Plaintiff/Appellant	Phoenix
Caron L.B. Close, Scottsdale City Attorney's Office By Lori S. Davis, Assistant City Attorney Robert B. Washburn, Assistant City Attorney Attorneys for Defendant/Appellee	Scottsdale

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**D O W N I E**, Judge

¶1 Brenda Schwartz appeals from the superior court's grant of summary judgment to the City of Scottsdale (the "City") based on her failure to comply with statutory notice of claim requirements. Finding no error, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Schwartz submitted a "City of Scottsdale Claim Form for Damages to Persons or Personal Property" (the "form"), alleging she was injured in a fall on a City sidewalk. She listed certain medical and out-of-pocket expenses on the form and wrote "\$50,000" on the line requesting the total amount of damages she was claiming. The form also included a line for Schwartz to "state the specific amount for which the claim(s) can be settled at this time." Schwartz left that line blank. The form warned:

ALL CLAIMS MUST COMPLY WITH A.R.S. § 12-821.01. . . . BY PROVIDING THIS CLAIM FORM, OR ENTERING INTO ANY DISCUSSIONS OR NEGOTIATIONS WITH YOU, THE CITY OF SCOTTSDALE [sic] DOES NOT WAIVE ANY OF ITS DEFENSES PURSUANT TO A.R.S. § 12-821.01, ET SEQ., OR ANY OTHER LAW. IF YOU ARE UNSURE ABOUT YOUR LEGAL OBLIGATIONS, CONSULT A LAWYER.

THIS FORM IS OFFERED BY THE CITY OF SCOTTSDALE FOR CONVENIENCE PURPOSES ONLY -- THE CLAIMANT(S) REMAIN(S) SOLELY RESPONSIBLE TO INSURE COMPLIANCE WITH STATE LAW. YOU ARE CAUTIONED THAT YOU MUST PROVIDE SUFFICIENT FACTS FOR THE CITY TO UNDERSTAND THE BASIS UPON WHICH LIABILITY IS CLAIMED AND THE FACTS SUPPORTING THE AMOUNT FOR

WHICH YOU STATE THE CLAIM CAN BET [sic]  
SETTLED.

¶13 After the City denied her claim, Schwartz filed suit against it and other defendants. The City moved for summary judgment, arguing Schwartz's failure to comply with Arizona Revised Statute ("A.R.S.") section 12-821.01 was fatal to her claim against it. The superior court granted the City's motion because Schwartz's notice of claim failed to state a specific amount for which she would settle.

¶14 Schwartz timely appealed. We have jurisdiction under A.R.S. § 12-2101(B).

#### DISCUSSION

¶15 We review *de novo* whether a notice of claim complies with statutory requirements. *Jones v. Cochise County*, 218 Ariz. 372, 375, ¶ 7, 187 P.3d 97, 100 (App. 2008) (citations omitted). We also review the entry of summary judgment *de novo*, viewing the evidence and all reasonable inferences therefrom in the light most favorable to the party opposing it. *Emmett McLoughlin Realty, Inc. v. Pima County*, 212 Ariz. 351, 353, ¶ 2, 132 P.3d 290, 292 (App. 2006) (citations omitted). Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c)(1).

¶6 Before suing a public entity for damages, a person must submit a notice of claim that complies with A.R.S. § 12-821.01. *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 294, ¶ 1, 152 P.3d 490, 491 (2007). A claimant who does not satisfy the statutory requirements for a notice of claim may not sue the public entity. *Id.* at 295, ¶ 6, 152 P.3d at 492 (citations omitted).

¶7 A valid notice of claim must include, *inter alia*, "a specific amount for which the claim can be settled and the facts supporting that amount." Ariz. Rev. Stat. ("A.R.S.") § 12-821.01(A). Schwartz contends that, by writing "\$50,000" on the form where it requested her total claimed damages, she complied with the statutory requirement to state a "specific amount for which the claim can be settled." *See id.* We disagree.

¶8 "'Fundamental principles of statutory construction' do not allow us to ignore the 'clear and unequivocal' language of the statute," which requires claimants to state an amount for which their claim may be settled. *Deer Valley*, 214 Ariz. at 296, 299, ¶¶ 9, 21, 152 P.3d at 493, 496 (citations omitted). "[T]he statute does not require that claimants reveal the amount that they will demand at trial if litigation ensues but simply requires that claimants identify the specific amount for which they will settle . . . ." *Id.* at 296, ¶ 9, 152 P.3d at 493.

¶9 Substantial compliance with statutory requirements, which is essentially what Schwartz advocates, is insufficient. *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527, ¶ 10, 144 P.3d 1254, 1256 (2006) (citation omitted) ("Actual notice and substantial compliance do not excuse failure to comply with the statutory requirements of A.R.S. § 12-821.01(A)."). The sum for which a person will settle a claim is not necessarily synonymous with the total amount of claimed damages. Settlements typically represent an adjustment or compromise of claims. See *Black's Law Dictionary* 1372 (6th ed. 1990) (defining "settlement" as "an adjusting" or "an adjustment between persons concerning their dealings or difficulties"). A claimant might well assert entitlement to \$50,000 in damages, but nevertheless offer to settle for some lesser sum in order to avoid the time, expense, and uncertainty of litigation.

¶10 We agree with Schwartz's observation that she was not required to use the City's form. The relevant inquiry, though, is whether her notice of claim, however presented, complied with statutory requirements. The form at issue here clearly alerted Schwartz to the need for a specific settlement demand. Schwartz does not contend she was confused or misled by this request, only that she "inadvertently forgot" to complete the relevant line. See *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, 62, ¶ 25,

234 P.3d 623, 630 (App. 2010) (citation omitted) ("Although excusable neglect once relieved compliance with the notice of claim statute, the Legislature eliminated that exception when it amended the statute in 1994.").

¶11 Basic principles of contract law also support our conclusion. See *Yollin v. City of Glendale*, 219 Ariz. 24, 31, ¶ 19, 191 P.3d 1040, 1047 (App. 2008) (courts may consider contract law in assessing compliance with § 12-821.01(A)). "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Restatement (Second) of Contracts* § 24 (1981). Schwartz's notice of claim did not present a settlement offer that, if accepted, would extinguish the City's liability. Unlike the claims in *Yollin* and *Jones*, and notwithstanding the City's explicit request for a sum certain settlement offer (and its warning that one was required), Schwartz made no such offer. See *Yollin*, 219 Ariz. at 27 n.1, ¶ 2, 191 P.3d at 1043 n.1 (noting the claimant "demand[ed] \$150,000.00" and promised to "release the City of Glendale and their agents and employees from any liability associated with this claim"); *Jones*, 218 Ariz. at 376, ¶ 11, 187 P.3d at 101 (observing that Jones's notice of claim "explicitly referred to § 12-821.01 and described the amounts it stated as 'offers to settle'").

¶12 Schwartz suggests the City could have informed her of the deficiency in her notice of claim and/or inquired whether she in fact intended to make a \$50,000 settlement offer. The City, though, had no obligation to take such actions. *Cf. Vasquez v. State*, 220 Ariz. 304, 310 n.4, ¶ 18, 206 P.3d 753, 759 n.4 (App. 2008) ("We do not suggest, however, the state has an obligation under any circumstances to request more facts . . . ."). The statute places the burden of compliance on claimants, which our supreme court has observed is "not difficult."<sup>1</sup> *Deer Valley*, 214 Ariz. at 296, 299, ¶¶ 9, 21, 152 P.3d at 493, 496.

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<sup>1</sup> We are not presented with an issue of waiver or estoppel. See *Pritchard v. State*, 163 Ariz. 427, 432, 788 P.2d 1178, 1183 (1990) (citations omitted) (notice of claim statute is "subject to waiver, estoppel and equitable tolling"). In its answer to the complaint and its motion for summary judgment, filed almost immediately thereafter, the City asserted Schwartz's non-compliance with A.R.S. § 12-821.01(A). See *Jones*, 218 Ariz. at 380, ¶ 26, 187 P.3d at 105 ("[W]aiver may be found when a governmental entity has taken substantial action to litigate the merits of the claim that would not have been necessary had the entity promptly raised the defense.").

