

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1597

CA 09-00549

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, AND CARNI, JJ.

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DOMINIC DECICCO AND GERARD DECICCO,  
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

CITY OF SYRACUSE, DEFENDANT-APPELLANT.

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RORY A. MCMAHON, CORPORATION COUNSEL, SYRACUSE (PAMELA R. EISENBERG OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

DOMINIC DECICCO AND GERARD DECICCO, PLAINTIFFS-RESPONDENTS PRO SE.

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Appeal from an order of the Supreme Court, Onondaga County  
(Donald A. Greenwood, J.), entered May 21, 2008. The order denied the  
motion of defendant to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is  
unanimously reversed on the law without costs, the motion is granted  
and the complaint is dismissed.

Memorandum: Plaintiffs commenced this action on March 20, 2008  
seeking damages resulting from an incident on December 20, 2006, in  
which firefighters employed by defendant broke down the door to  
plaintiffs' residence while responding to a report of a fire.  
Defendant moved to dismiss the complaint on the ground that the action  
was commenced one year and 91 days after the date of the incident, and  
thus it is time-barred by one day, pursuant to General Municipal Law §  
50-i (1). Supreme Court denied the motion on the ground that February  
29, 2008 could not be counted pursuant to General Construction Law §  
58, and thus that the action is not time-barred. We reverse.

Pursuant to General Municipal Law § 50-i (1), a plaintiff has  
"one year *and* ninety days" in which to commence an action "after the  
happening of the event" (emphasis added). We agree with defendant  
that, pursuant to the plain language of the statute, the one-year  
period must be counted first, followed by the 90-day period (*see*  
*generally Matter of Antine v City of New York*, 14 Misc 3d 161, 173).  
Inasmuch as the 90-day period is considered independently, it is not  
governed by General Construction Law § 58, which defines the term  
"year" in a statute. Rather, the 90-day period is governed by General  
Construction Law § 20, which requires a calculation of the "number of  
calendar days exclusive of the calendar day from which the reckoning  
is made." Here, the action was commenced one year and 91 days after

December 20, 2006, and thus it is time-barred.

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court