

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12441
C/cb

_____AD3d_____

Argued - September 18, 2006

DAVID S. RITTER, J.P.
GLORIA GOLDSTEIN
REINALDO E. RIVERA
ROBERT A. SPOLZINO, JJ.

2005-11351

DECISION & ORDER

Fireman's Fund Insurance Company etc., appellant,
v Village of Lake Success, respondent.

(Index No. 9448/05)

Canter Law Firm, P.C., White Plains, N.Y. (Nelson E. Canter of counsel), for appellant.

Morris Duffy Alonso & Faley, New York, N.Y. (Anna J. Ervolina and Andrea M. Alonso of counsel), for respondent.

In a subrogation action, in effect, to recover the sum of \$233,471.91 paid to the subrogor insured for property damage incurred on February 14, 2004, the plaintiff appeals from an order of the Supreme Court, Nassau County (O'Connell, J.), dated October 11, 2005, which granted the defendant's motion to dismiss the action as time barred.

ORDERED that the order is affirmed, with costs.

The statute of limitations was not tolled for the period between the defendant's demand for a hearing pursuant to General Municipal Law § 50-h and the hearing (*see Baez v New York City Health & Hosps. Corp.*, 168 AD2d 529, 577, *affd* 80 NY2d 571; *Mignott v New York City Health & Hosps. Corp.*, 250 AD2d 165, 171; *Cinquemani v County of Nassau*, 28 AD3d 699).

October 31, 2006

Page 1.

FIREMAN'S FUND INSURANCE COMPANY v VILLAGE OF LAKE SUCCESS

Further, there is no basis to apply the doctrine of equitable estoppel to the defendant (*see Spirig v Evans*, 26 AD3d 425; *Bennett v Metro-North Commuter R.R.*, 231 AD2d 662).

RITTER, J.P., GOLDSTEIN, RIVERA and SPOLZINO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court