

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

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_____AD3d_____

Argued - October 26, 2006

ANITA R. FLORIO, J.P.
THOMAS A. ADAMS
GABRIEL M. KRAUSMAN
REINALDO E. RIVERA, JJ.

2005-06623

DECISION & ORDER

Joel Hinderstein, et al., appellants, v Town of
Babylon, respondent.

(Index No. 19305/03)

Dollinger, Gonski & Grossman, Carle Place, N.Y. (Matthew Dollinger of counsel),
for appellants.

Lewis Johs Avallone Aviles, LLP, Melville, N.Y. (Brian J. Greenwood of counsel),
for respondent.

In an action, inter alia, to recover damages for inverse condemnation, the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Werner, J.), dated June 2, 2005, which denied their motion for leave to amend their complaint and granted the defendant's cross motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

ORDERED that the order is affirmed, with costs.

The plaintiffs failed to demonstrate the existence of a protectable property interest (*see Cathedral of Incarnation in Diocese of Long Is. v Garden City Co.*, 265 AD2d 286, 290). Consequently, the Due Process Clauses of the United States and New York State Constitutions are not implicated (*see Board of Regents of State Colleges v Roth*, 408 US 564; *Morillo v City of New York*, 178 AD2d 7, 12).

November 28, 2006

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The Supreme Court correctly denied the plaintiffs' motion for leave to amend the complaint, as the proposed amendment was palpably insufficient as a matter of law and totally devoid of merit (*see* CPLR 3025[b]; *Tarantini v Russo Realty Corp.*, 259 AD2d 484).

FLORIO, J.P., ADAMS, KRAUSMAN and RIVERA, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court