

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

D19892  
X/prt

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Submitted - June 4, 2008

STEVEN W. FISHER, J.P.  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2007-08207

DECISION & ORDER

Frick Etienne, appellant,  
v H. Schrier & Co., Inc., respondent.

(Index No. 670/06)

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Linda T. Ziatz, Massapequa Park, N.Y., for appellant.

Hardin, Kundla, McKeon & Poletto, New York, N.Y. (Stephen J. Donahue of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Kelly, J.), dated July 12, 2007, which granted the defendant's motion pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred.

ORDERED that the order is affirmed, with costs.

It is undisputed that the plaintiff's cause of action alleging negligence accrued on January 8, 2003. Accordingly, pursuant to the three-year limitations period for negligence actions set forth in CPLR 214(5), the last date upon which the plaintiff could timely commence the action was January 8, 2006. However, the action was commenced by the filing of a summons and complaint on January 10, 2006, and therefore was untimely (*see Spirig v Evans*, 26 AD3d 425). Contrary to the plaintiff's contentions, there is no basis in the record for a finding that the defendant either waived the defense of the statute of limitations or engaged in conduct which would have given rise to an estoppel (*id.*).

FISHER, J.P., FLORIO, ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

July 1, 2008

ETIENNE v H. SCHRIER & CO., INC.