

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

D25363
O/kmg

_____AD3d_____

Submitted - October 30, 2009

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2008-11252

DECISION & ORDER

HP Capital, LLC, respondent, v Village of Sleepy
Hollow, appellant, et al., defendants.

(Index No. 1565/08)

Gaines, Gruner, Ponzini & Novick, LLP, White Plains, N.Y. (Robert J. Ponzini of
counsel), for appellant.

In an action, inter alia, to recover damages for breach of contract, the defendant Village of Sleepy Hollow appeals from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered November 7, 2008, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it as time-barred and for failure to timely file a notice of claim pursuant to CPLR 9802.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Village of Sleepy Hollow for summary judgment dismissing the complaint insofar as asserted against it is granted.

The plaintiff, HP Capital, LLC, commenced this action against, among others, the defendant Village of Sleepy Hollow, alleging that on March 22, 2005, the Village sold defective tax sale certificates to it. On or about November 12, 2007, the plaintiff filed a notice of claim with the Village Clerk. On or about January 14, 2008, the plaintiff commenced this action. The Village moved for summary judgment dismissing the complaint insofar as asserted against it as time-barred and for failure to timely file a notice of claim pursuant to CPLR 9802. The Supreme Court denied the motion. We reverse.

December 15, 2009

Page 1.

HP CAPITAL, LLC, v VILLAGE OF SLEEPY HOLLOW

Pursuant to CPLR 9802, “no action shall be maintained against the village upon or arising out of a contract of the village unless the same shall be commenced within *eighteen months* after the cause of action therefor shall have accrued, nor unless a written verified claim shall have been filed with the village clerk within *one year* after the cause of action shall have accrued” (emphasis added). Here, the plaintiff’s claim, in essence, was predicated on breach of contract (*see generally Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389; *Heffez v L & G Gen. Constr., Inc.*, 56 AD3d 526).

The plaintiff purchased the allegedly defective certificates on March 22, 2005. The notice of claim, however, was not filed until sometime on or about November 12, 2007, more than two years later. “A cause of action for breach of contract accrues and the statute of limitations begins to run from the time of breach” (*Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 108 AD2d 3, 7, *affd* 66 NY2d 38 [internal quotation marks omitted]; *see Ely-Cruikshank Co. v Bank of Montreal*, 81 NY2d 399, 402). As a general rule, accrual occurs when all of the factual elements necessary to maintain the lawsuit and obtain relief come into existence (*see Ely-Cruikshank Co. v Bank of Montreal*, 81 NY2d at 406, citing *Weinstein-Korn-Miller*, NY Civ Prac P 201.02, at 2-10). Thus, here, the cause of action accrued at the time of the alleged breach, i.e., when the certificates were sold. Accordingly, filing of the notice of claim was required to have been made within one year after the cause of action accrued on March 22, 2005 (*see* CPLR 9802). Moreover, the statute of limitations expired within 18 months after the cause of action accrued (*id.*).

Accordingly, the Supreme Court should have granted the Village’s motion for summary judgment dismissing the complaint insofar as asserted against it as time-barred and for failure to timely file a notice of claim pursuant to CPLR 9802.

SKELOS, J.P., ENG, AUSTIN and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court