

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

D28311
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_____AD3d_____

Argued - May 11, 2010

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-04759

DECISION & ORDER

Lisa Humbertson Brady, etc., appellant, v Village of
Malverne, et al., respondents, et al., defendants.

(Index No. 10667/08)

McElfish Law Firm, P.C., New York, N.Y. (Raymond D. McElfish of counsel), for
appellant.

Congdon, Flaherty, O'Callaghan, Uniondale, N.Y. (Kathleen D. Foley of counsel), for
respondents.

White, Quinlan & Staley, LLP, Garden City, N.Y. (Terence M. Quinlan and
Christopher Simone of counsel), for defendant Ferrara Fire Apparatus, Inc.

In an action to recover damages for wrongful death and personal injuries, etc., the
plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau
County (Woodard, J.), entered March 26, 2009, as granted those branches of the separate motions
of the defendant Village of Malverne and the defendant Malverne Fire Department/Norwood Hook,
Ladder & Hose Company #1 which were pursuant to CPLR 3211(a)(7) to dismiss the complaint
insofar as asserted against each of those defendants, and, in effect, denied, as academic, that branch
of her cross motion which was to conduct certain discovery at the premises of the defendant
Malverne Fire Department/Norwood Hook, Ladder & Hose Company #1.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff's decedent, a volunteer firefighter with the defendant Malverne Volunteer

August 31, 2010

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Firefighter Department, sued herein as Malverne Fire Department/Norwood Hook, Ladder & Hose Company #1 (hereinafter the MVFD), was performing work on the top of a fire truck in the MFVD's fire house. Another firefighter, not realizing that the decedent was working on the top of the truck, began to drive the truck out of the fire house. The decedent was pinned between the top of the truck and either the ceiling or a ceiling beam. He then fell from the truck, and later died due to the injuries he sustained.

The decedent's widow (hereinafter the plaintiff) commenced the instant action individually and in her capacity as the administrator of the decedent's estate. Insofar as relevant herein, the Supreme Court granted those branches of the separate motions of the defendants MVFD and the Village of Malverne which were to dismiss the complaint insofar as asserted against each of those defendants on the ground that General Municipal Law § 205-a is not applicable to a volunteer firefighter's line-of-duty injuries sustained in a fire house, and, in effect, denied, as academic, that branch of the plaintiff's cross motion which was to compel certain discovery.

We affirm, but for a reason different from that stated by the Supreme Court. The plaintiff's claims asserted against the MVFD and the Village (hereinafter together the respondents) are barred by Volunteer Firefighters' Benefit Law § 19. That provision makes the benefits provided by the Volunteer Firefighters' Benefit Law the exclusive remedy of an administrator of a volunteer firefighter's estate, a volunteer firefighter's spouse, "or anyone entitled to recover damages" on account of a line-of-duty injury sustained by a volunteer firefighter, against, among others:

"(1) the political subdivision liable for the payment of such benefits, (2) the political subdivision regularly served by the fire company of which the volunteer fireman is a member, whether or not pursuant to a contract for fire protection, even though any such political subdivision is not liable for the payment of such benefits in the circumstances, and (3) any person or agency acting under governmental or statutory authority in furtherance of the duties or activities in relation to which any such injury resulted."

Since the plaintiff seeks to recover damages both in her capacity as the administrator of the decedent's estate, and in her individual capacity as his widow, and the respondents are among those enumerated in the statute, the plaintiff's claims asserted against them here are barred (*see Gresis v Garth Manor Corp.*, 20 AD2d 726).

There is no merit to the plaintiff's contention that, notwithstanding the exclusivity provision of the Volunteer Firefighters' Benefit Law, she is nonetheless entitled to recover from the respondents under the provisions of General Municipal Law § 205-a. Contrary to her contention, General Municipal Law § 205-a does not provide for a recovery from the respondents in addition to that provided by the various provisions of the Volunteer Firefighters' Benefit Law. The Legislature was clearly aware of the provisions of the General Municipal Law, first enacted in 1909, when it enacted the Volunteer Firefighters' Benefit Law in 1956 (*see* Memorandum of Joint Legislative Committee on Fire Laws, McKinney's Cons Laws of NY, Book 63B, at XI, referring to General Municipal Law § 205), and did not provide an exception to the Volunteer Firefighters' Benefits Law

for General Municipal Law § 205-a. When it subsequently amended General Municipal Law § 205-a in 1996 and again in 1999, the Legislature again failed to provide that the additional remedies contained in General Municipal Law § 205-a were in addition to, and not barred by, the provisions of Volunteer Firefighters' Benefit Law § 19. The Legislature is presumed to know the law in existence at the time it enacts legislation which, in this case, includes our 1964 holding in *Gresis*, as well as the effect and implication of its own enactments (*see Leanos v Shell Oil Co.*, 55 AD3d 796, 798; *Matter of Rhodanna C.B.*, 36 AD3d 106, 109; *see also Matter of Department of Social Servs. v Thomas J.S.*, 100 AD2d 119, 128). Since the Legislature failed to provide that the additional rights granted pursuant to General Municipal Law § 205-a were not barred by Volunteer Firefighters' Benefit Law § 19, there is no basis to depart from our previous holding in *Gresis* and now permit the plaintiff to proceed under General Municipal Law § 205-a.

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

FLORIO, J.P., ANGIOLILLO, HALL and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court