

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

D29322
Y/prt

_____AD3d_____

Submitted - October 25, 2010

PETER B. SKELOS, J.P.
STEVEN W. FISHER
FRED T. SANTUCCI
JOHN M. LEVENTHAL, JJ.

2009-01330

DECISION & ORDER

Pedro Picon Tapia, respondent, v Prudential Richard
Albert Realtors, et al., defendants, Prudential Rand
Realty, et al., appellants.

(Index No. 21280/06)

Condon & Associates, PLLC, Nanuet, N.Y. (Brian K. Condon of counsel), for
appellants.

In an action, inter alia, to recover damages for negligent misrepresentation, the defendants Prudential Rand Realty and Maria Graca appeal, as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered December 9, 2008, as denied, as untimely, that branch of their motion which was, in effect, for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, without costs or disbursements.

The Supreme Court did not improvidently exercise its discretion in denying, as untimely, that branch of the appellants' motion which was, in effect, for summary judgment dismissing the complaint insofar as asserted against them. The appellants failed to demonstrate good cause for their delay in making the motion (*see* CPLR 3212[a]; *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725; *Brill v City of New York*, 2 NY3d 648, 652; *Chechile v Magee*, 66 AD3d 625). Contrary to the appellants' contention, the issues raised on their motion were not nearly identical to the issues raised on the codefendants' timely motion for summary judgment dismissing the complaint insofar as asserted against them (*see Lennard v Khan*, 69 AD3d 812, 814; *Podlaski v Long Is. Paneling Ctr.*

December 7, 2010

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of Centereach, Inc., 58 AD3d 825, 827; *cf. Bickelman v Herrill Bowling Corp.*, 49 AD3d 578, 580).

SKELOS, J.P., FISHER, SANTUCCI and LEVENTHAL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court