

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

D30042
O/prt

_____AD3d_____

Argued - January 25, 2011

MARK C. DILLON, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
L. PRISCILLA HALL, JJ.

2010-00313

DECISION & ORDER

Board of Managers, Fairview at Artist Lake,
Condominium I, appellant, v Fairview at
Artist Lake, et al., defendants, Town of
Brookhaven, respondent.

(Index No. 44867/08)

Spada, Ardam & Sibener, PLLC, Smithtown, N.Y. (Paul S. Sibener of counsel), for
appellant.

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (Diane K. Farrell and Stephen D.
Trace of counsel), for respondent.

In an action, inter alia, to recover damages for the negligent issuance of a certificate of occupancy, the plaintiff appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Suffolk County (Cohen, J.), entered December 4, 2009, as, upon so much of an order of the same court dated October 6, 2009, as granted that branch of the motion of the defendant Town of Brookhaven which was for summary judgment dismissing the complaint insofar as asserted against it, dismissed the complaint insofar as asserted against the defendant Town of Brookhaven.

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

Contrary to the plaintiff's contentions, the Supreme Court properly granted that branch of the motion of the defendant Town of Brookhaven which was for summary judgment dismissing the complaint insofar as asserted against it. The Town established its prima facie

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entitlement to judgment as a matter of law by showing that this action, insofar as asserted against it, is time-barred under General Municipal Law § 50-i(1)(c) (see *Klein v City of Yonkers*, 73 AD2d 931, *affd* 53 NY2d 1011; *Doyle v 800, Inc.*, 72 AD2d 761; *Francis v Posa*, 21 AD3d 1335). In opposition, the plaintiff failed to raise a triable issue of fact.

The parties' remaining contentions are without merit or have been rendered academic.

DILLON, J.P., COVELLO, FLORIO and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court