

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

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Submitted - March 31, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-06999

DECISION & ORDER

Town of Philipstown, appellant, v Garrison
Contracting, Inc., respondent.

(Index No. 324/08)

Rice & Amon, Suffern, N.Y. (Terry Rice of counsel), for appellant.

Marla B. Rubin, Mohegan Lake, N.Y., for respondent.

In an action for injunctive relief, the plaintiff appeals from an order of the Supreme Court, Putnam County (Nicolai, J.), dated July 8, 2010, which denied its motion pursuant to CPLR 3211 to dismiss the defendant's counterclaims.

ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion pursuant to CPLR 3211 to dismiss the defendant's counterclaims is granted.

The counterclaims asserted by the defendant required, as a condition precedent, a timely served notice of claim pursuant to General Municipal Law § 50-e (*see Dixon v City of New York*, 76 AD3d 1043, 1044; *Kaufman v Village of Mamaroneck*, 286 AD2d 666, 666-667). Since the notice of claim was served by the defendant more than 90 days after the defendant's claims arose, and the defendant did not seek leave to serve a late notice of claim, the Supreme Court should have granted the plaintiff's motion to dismiss the defendant's counterclaims (*see* General Municipal Law § 50-e; *Stoll v New York City Health & Hosps. Corp.*, 8 AD3d 654; *Kaufman v Village of*

Mamaroneck, 286 AD2d at 667; *Scarfava v City of Newburgh*, 255 AD2d 436).

In light of our determination, we need not reach the plaintiff's remaining contentions.

SKELOS, J.P., BELEN, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan
Clerk of the Court