

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

D32640
Y/kmb

_____AD3d_____

Argued - October 4, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2010-08875

DECISION & ORDER

Theodore Granata, Jr., etc., et al., plaintiffs, v
City of White Plains, appellant, Mills Corporation,
respondent, et al., defendants.

(Index No. 8308/07)

Joseph A. Maria, P.C., White Plains, N.Y. (Frances Dapice Marinelli of counsel), for
appellant.

In an action, inter alia, to recover damages for negligence and wrongful death, the defendant City of White Plains appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered July 27, 2010, as, upon granting that branch of the motion of the defendant Mills Corporation which was for summary judgment dismissing the complaint insofar as asserted against it, found that the City of White Plains had a duty to provide security within the parking garage where the underlying incident occurred.

ORDERED that the appeal is dismissed, without costs or disbursements.

The plaintiffs commenced this action, inter alia, to recover damages for negligence and wrongful death after their decedent was attacked and killed in the parking garage attached to the White Plains Galleria Mall (hereinafter the Mall). The defendant Mills Corporation (hereinafter Mills), the alleged owner of the Mall, moved, inter alia, for summary judgment dismissing the complaint insofar as asserted against it. Mills asserted that it did not secure, construct, operate, or maintain the parking garage and that it was not responsible for providing security within it.

The Supreme Court granted that branch of Mills' motion which was for summary

October 25, 2011

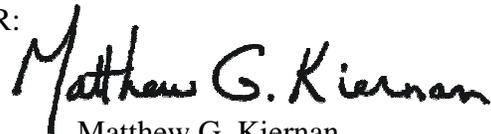
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judgment dismissing the complaint insofar as asserted it. In arriving at its determination, the Supreme Court found, inter alia, that the defendant City of White Plains (hereinafter the City), as the owner of the garage, had a duty to provide security there.

On this appeal, the City does not seek, nor could it seek, to overturn that part of the Supreme Court's order which granted Mills' requested relief (*see Mixon v TRV, Inc.*, 76 AD3d 144, 156-157). Rather, it challenges only the Supreme Court's finding that the City had a duty to provide security at the garage. Inasmuch as findings of fact and conclusions of law are not separately appealable, the appeal must be dismissed (*see Pennsylvania Gen. Ins. Co. v Austin Powder Co.*, 68 NY2d 465, 472-473; *Matter of Kneip v McWilliams*, 71 AD3d 895; *Matter of Noelia T.*, 70 AD3d 957; *Lester & Assoc., P.C. v Eneman*, 69 AD3d 906, 907; *Valee v Macina*, 280 AD2d 598; *Naar v Litwak & Co.*, 260 AD2d 613; *Matter of County of Westchester v O'Neill*, 191 AD2d 556, 556-557).

DILLON, J.P., BALKIN, ENG and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court