

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

D33311
G/kmb

_____AD3d_____

Argued - November 21, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-01813

DECISION & ORDER

In the Matter of Rosa Parrino, et al., appellants,
v New York City Board of Standards and Appeals,
et al., respondents.

(Index No. 16306/10)

Stephen A. Harrison, Brooklyn, N.Y., for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and Kristin M. Helmers of counsel), for respondents New York City Board of Standards and Appeals, Meenakshi Srinivasan, Christopher Collins, Dara Ottley-Brown, Susan Hinkson, Eileen Montanez, and New York City Department of Buildings.

Marvin B. Mitzner, LLC, New York, N.Y., for respondent Dutch Kills Partners, LLC.

In a proceeding pursuant to CPLR article 78 to review a resolution of the New York City Board of Standards and Appeals, dated May 25, 2010, which, after a hearing, granted the application of Dutch Kills Partners, LLC, for a determination that it obtained the right to complete a proposed nine-story hotel building on its property under the common-law doctrine of vested rights and reinstated the building permit granted by the New York City Department of Buildings to Dutch Kills Partners, LLC, the petitioners appeal from an order and judgment (one paper) of the Supreme Court, Queens County (Grays, J.), entered January 11, 2011, which denied their motion pursuant to CPLR 306-b to extend the time to serve the notice of petition and the petition, and granted the cross motion of the New York City Board of Standards and Appeals, Meenashki Srinivasan, Christopher Collins, Dara Ottley-Brown, Susan Hinkson, Eileen Montanez, and the New York City Department of Buildings, and the separate cross motion of Dutch Kills Partners, LLC, to dismiss the petition for lack of personal jurisdiction, and dismissed the proceeding for lack of personal jurisdiction.

December 20, 2011

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ORDERED that the order and judgment is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

It is undisputed that the petitioners failed to serve the respondents with the notice of petition and petition within the 15-day period following the expiration of the applicable statute of limitations (*see* CPLR 306-b). Contrary to the petitioners' contention, they failed to demonstrate that an extension was warranted in the interest of justice (*id.*; *see Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 106). Among other things, the petitioners failed to demonstrate diligence in their attempt at service or that the length of the delay in serving the petition subsequent to the expiration of the 15-day period set forth in CPLR 306-b was reasonable. Accordingly, the Supreme Court providently exercised its discretion in denying their motion pursuant to CPLR 306-b to extend the time to serve the notice of petition and the petition and properly granted the respondents' separate cross motions to dismiss the proceeding for lack of personal jurisdiction (*see Leader v Maroney, Ponzini & Spencer*, 97 NY2d at 106; *American Tel. & Tel. Co. v Schnabel Found. Co.*, 38 AD3d 580; *see also Matter of Anonymous v New York State Off. of Children & Family Servs.*, 53 AD3d 810).

ANGIOLILLO, J.P., DICKERSON, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court