

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

D33317
Y/prt

_____AD3d_____

Submitted - November 29, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2011-01772

DECISION & ORDER

Andrew Liston, et al., appellants, v
Town of Newburgh, respondent.

(Index No. 5152/09)

Sussman & Watkins, Goshen, N.Y. (Michael H. Sussman of counsel), for appellants.

Drake, Loeb, Heller, Kennedy, Gogerty, Gaba & Rodd, PLLC, New Windsor, N.Y.
(Stephen J. Gaba and Ralph L. Puglielle, Jr., of counsel), for respondent.

In an action to recover damages for negligence, the plaintiffs appeal from an order of the Supreme Court, Orange County (McGuirk, J.), dated January 7, 2011, which granted the defendant's motion to dismiss the complaint as time-barred.

ORDERED that the order is affirmed, with costs.

General Municipal Law § 50-i(1) states, in part, that “[n]o action . . . shall be prosecuted . . . against a . . . town . . . for . . . damage to real or personal property alleged to have been sustained by reason of the negligence . . . of such . . . town . . . unless . . . the action . . . shall be commenced within one year and ninety days after the happening of the event upon which the claim is based.” Here, the plaintiffs alleged, inter alia, that the Town of Newburgh's negligent installation of a storm drainage system in May 2007 caused or exacerbated flooding to their property on March 5, 2008. Significantly, however, the plaintiffs make no allegation of negligent maintenance.

Under these circumstances, "the happening of the event upon which the claim [was]

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based” (General Municipal Law § 50-i[1]) was the May 2007 storm drainage installation (*see Klein v City of Yonkers*, 53 NY2d 1011, 1014; *Johnson v Marianetti*, 202 AD2d 970, 970-971; *Scarfava v City of Newburgh*, 255 AD2d 436; *Pleasant Ridge Townhouses Homeowners’ Assn. v T & D Constr Corp.*, 181 AD2d 871, 872; *Nebbia v County of Monroe*, 92 AD2d 724). Accordingly, as measured from the date of this “occurrence,” the plaintiffs’ commencement of their action in May 2009 was untimely (*see Regatta Condominium Assn. v Village of Mamaroneck*, 303 AD2d 737, 738).

The plaintiffs’ remaining contentions are without merit.

Accordingly, the Supreme Court properly granted the Town’s motion to dismiss the complaint as time-barred.

RIVERA, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court