

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

D32938
H/prt

_____AD3d_____

Argued - October 27, 2011

ANITA R. FLORIO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-00663

DECISION & ORDER

Antoinette McIntosh, etc., et al., respondents, v
Village of Freeport, appellant, et al., defendants
(and a third-party action).

(Index No. 10185/07)

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., of
counsel), for appellant.

Spar & Bernstein, P.C. (Adam S. Handler and Pollack, Pollack, Isaac & De Cicco,
New York, N.Y. [Brian J. Isaac], of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant Village of
Freeport appeals from an order of the Supreme Court, Nassau County (Palmieri, J.), entered
December 10, 2009, which granted the motion of the plaintiff Andrea Martin, as guardian of
Antoinette McIntosh, an incapacitated person, for leave to amend the notice of claim to add a
derivative cause of action to recover damages for loss of services on behalf of Andrea Martin, in her
individual capacity.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the motion of the plaintiff Andrea Martin
(hereinafter the plaintiff), as guardian of Antoinette McIntosh, for leave to amend her notice of claim
to assert a derivative cause of action to recover damages for loss of services on her own behalf. The

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plaintiff sought leave to amend her notice of claim in order to address an omission (*see* General Municipal Law § 50–e[6]). The proposed amendment sought to add a derivative claim predicated upon the same facts which had already been included in the notice of claim and complaint. Therefore, the defendant Village of Freeport had been duly and timely notified (*see Burgarella v City of New York*, 265 AD2d 361). Under the circumstances, since the Village did not suffer any prejudice, the plaintiff’s motion for leave to amend the notice of claim was properly granted (*id.* at 362).

The Village’s remaining contention is without merit.

FLORIO, J.P., HALL, AUSTIN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court