

<b>Wilkinson v Community Preserv. Corp.</b>
2010 NY Slip Op 04630
Decided on June 1, 2010
Appellate Division, First Department
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Decided on June 1, 2010

Gonzalez, P.J., Sweeny, Acosta, Renwick, Román, JJ.

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**[\*1]Andrea Wilkinson, et al., Plaintiffs-Appellants,**

v

**Community Preservation Corporation, et al., Defendants-Respondents.**

Law Office of Steven A. Morelli, Garden City, (Steven A. Morelli of counsel), for appellants.  
Kaufman Borgeest & Ryan LLP, New York (Jonathan B. Bruno of counsel), for respondents.

Order, Supreme Court, New York County (Edward H. Lehner, J.), entered March 11, 2009, which, to the extent appealed from as limited by the briefs, granted defendants' motion for summary judgment dismissing plaintiff Wilkinson's claims, unanimously affirmed, without costs.

In support of her discrimination and retaliation claims, plaintiff Wilkinson failed to offer evidence to show that the legitimate, non-discriminatory reasons defendants articulated for their actions were false, contrived or pretextual (*see Koester v New York Blood Ctr.*, 55 AD3d 447 [2008]; *Stewart v Schulte Roth & Zabel LLP*, 44 AD3d 354 [2007], *lv denied* 10

NY3d 707 [2008]).

Additionally, plaintiff's New York City Human Rights Law claims are not viable because the alleged discriminatory conduct took place in Albany and no alleged discriminatory decision took place

in New York City (*Hoffman v Parade Pubs.*, 65 AD3d 48 [1st Dept. 2009]; *Duffy v Drake Beam Morin*, 1998 WL 252064 [SDNY 1998]).

Even assuming, arguendo, that plaintiff was a third-party beneficiary of the contract between defendant Community Preservation Corporation (CPC) and Ace Holding, LLC, she failed to show that the delays in payment by CPC constituted a breach of that contract. Nor did plaintiff show that defendants owed her a fiduciary duty (*see e.g. Chester Color Separations v Trefoil Capital Corp.*, 222 AD2d 276 [1995]). [\*2]

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 1, 2010

CLERK

[Return to Decision List](#)