
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 211 SSM 17
Ainsworth M. Bennett, &c.,
Appellant,
v.
St. John's Home et al.,
Respondents.

Submitted by David E. Woodin, for appellant.
Submitted by David H. Fitch, for respondents.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules,
order affirmed, with costs, and certified question not answered
as unnecessary. As the issue of the timeliness under CPLR
3212(a) of defendants' summary judgment motion was not preserved
in Supreme Court, the Court of Appeals lacks power to review
either the Appellate Division's exercise of its discretion to
reach the issue, or the issue itself (see Hecker v State of New
York, 20 NY3d 1087 [2013]). On the remaining issue presented,
the Appellate Division properly held that defendants were
entitled to summary judgment. Chief Judge Lippman and Judges
Pigott, Rivera, Abdus-Salaam and Fahey concur. Judge Stein took
no part.

Decided November 23, 2015