

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 13-00639

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ.

SVETLANA BALUK AND MARK OSILOVSKIY,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY,
DEFENDANT-RESPONDENT.

MICHELE E. DETRAGLIA, UTICA, FOR PLAINTIFFS-APPELLANTS.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (MARCO
CERCONE OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County (David A. Murad, J.), entered December 24, 2012. The order granted the motion of defendant to dismiss the complaint and denied the cross motion of plaintiffs for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs commenced this action alleging that defendant breached its obligations under their homeowner's policy when it failed to reimburse them fully for sums they expended to repair or replace damage to their residence resulting from "puff-back" from their malfunctioning furnace. Supreme Court properly denied plaintiffs' cross motion seeking summary judgment and granted defendant's motion to dismiss the complaint based upon plaintiffs' failure to commence this action within two years after the date of loss, as the policy required (*see 1840 Concourse Assoc., LP v Praetorian Ins. Co.*, 89 AD3d 592, 592, *lv denied* 19 NY3d 809; *Klawiter v CGU/OneBeacon Ins. Group*, 27 AD3d 1155, 1155). Plaintiffs' reliance upon *Bakos v New York Cent. Mut. Fire Ins. Co.* (83 AD3d 1485) is misplaced inasmuch as the insured in *Bakos* timely commenced that action within two years of the date of loss.

Entered: February 7, 2014

Frances E. Cafarell
Clerk of the Court