



Maxine Mallory, Appellant, v Allstate Insurance Company, Respondent. (Index No. 18410/10)

2011-00367

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

90 A.D.3d 621; 933 N.Y.S.2d 896; 2011 N.Y. App. Div. LEXIS 8727; 2011 NY Slip Op 8912

December 6, 2011, Decided

SUBSEQUENT HISTORY: Affirmed by *Mallory v. Allstate Ins. Co.*, 2012 N.Y. LEXIS 1986 (N.Y., Aug. 28, 2012)

the defendant's first, second, and third affirmative defenses.

Ordered that the order is affirmed, with costs.

HEADNOTES

Insurance--Exclusions

COUNSEL: [***1] Shayne, Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y. (Norman H. Dachs of counsel), for appellant.

Feldman, Rudy, Kirby & Farquharson, P.C., Jericho, N.Y. (Brian R. Rudy of counsel), for respondent.

JUDGES: Peter B. Skelos, J.P., L. Priscilla Hall, Plummer E. Lott, Sheri S. Roman, JJ. Skelos, J.P., Hall, Lott and Roman, JJ., concur.

OPINION

[*621] [**896] In an action, inter alia, to recover the proceeds of a fire insurance policy, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated December 13, 2010, which denied her motion pursuant to *CPLR 3211 (b)* to dismiss

The plaintiff commenced this action, inter alia, to recover the proceeds of a fire insurance policy. The defendant asserted several affirmative defenses based on policy exclusions. The plaintiff moved to dismiss the defendant's first, second, and third affirmative defenses on the ground that the defendant was precluded from raising those defenses as a result of the defendant's failure to comply with *11 NYCRR 216.6 (c)* in processing the plaintiff's claim. The Supreme Court properly denied the [***2] motion. In *De Marinis v Tower Ins. Co. of N.Y.* (6 *AD3d* 484, 486-487, 774 *NYS2d* 436 [2004]), this Court held that a failure to comply with *11 NYCRR 216.6 (c)* does not preclude an insurance company from relying on a policy exclusion to disclaim coverage. We decline the plaintiff's [**897] invitation to overrule *De Marinis*. Accordingly, the plaintiff did not demonstrate that the defenses were without merit as a matter of law (see *CPLR 3211 [b]*; *Galasso, Langione & Botter, LLP v Liotti*, 81 *AD3d* 880, 882, 917 *NYS2d* 664 [2011]). Skelos, J.P., Hall, Lott and Roman, JJ., concur.

***** Print Completed *****

Time of Request: Monday, September 03, 2012 21:11:33 EST

Print Number: 2826:368121113

Number of Lines: 55

Number of Pages: 1

Send To: LERNER, MATTHEW
GOLDBERG SEGALLA
8 SOUTHWOODS BLVD STE 300
ALBANY, NY 12211-2554