

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

D12420
E/cb

_____AD3d_____

Argued - September 18, 2006

DAVID S. RITTER, J.P.
GLORIA GOLDSTEIN
REINALDO E. RIVERA
ROBERT A. SPOLZINO, JJ.

2004-10559

DECISION & ORDER

Employers Insurance of Wausau, etc., respondent,
v Meli & Borelli Associates, Inc., etc., et al., defendants,
Cigna Corp., et al., appellants.

(Index No. 27055/96)

Mitchell & Incantalupo, Forest Hills, N.Y. (Thomas V. Incantalupo of counsel), for appellant Cigna Corp.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick and Catherine R. Everett of counsel), for appellant Crown Partition, Inc.

Curtis, Vasile, Devine & McElhenny, Merrick, N.Y. (Samantha B. Lansky of counsel), for appellant Royal Insurance Company.

Mauro, Goldberg & Lilling, LLP, Great Neck, N.Y. (Barbara D. Goldberg and Richard J. Montes of counsel), for respondent.

In an action, inter alia, for a judgment declaring that certain defendants are obligated to defend and indemnify the plaintiff in an action to recover damages for personal injuries entitled *Dean v Crown Constr. Corp.*, commenced in the Supreme Court, Kings County, under Index No. 15633/94, the defendant Cigna Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Martin, J.), dated October 13, 2004, as granted those branches of the plaintiff's motion which were to restore the action and for leave to amend the complaint to add a cause of action against it pursuant to Insurance Law § 3420, and the defendants Crown Partition,

October 31, 2006

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EMPLOYERS INSURANCE OF WAUSAU v MELI & BORELLI ASSOCIATES, INC.

Inc., and Royal Insurance Company separately appeal, as limited by their respective briefs, from so much of the same order as granted that branch of the plaintiff's motion which was to restore the action.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

The Supreme Court properly granted that the branch of the plaintiff's motion which was to restore the action (*see Travis v Cuff*, 28 AD3d 749; *Islam v Katz Realty Co.*, 296 AD2d 566). Further, the court properly granted that branch of the plaintiff's motion which was for leave to amend the complaint to add a cause of action pursuant to Insurance Law § 3420 against the defendant Cigna Corp. (*see Tarantini v Russo Realty Corp.*, 273 AD2d 458).

The parties' remaining contentions are without merit.

RITTER, J.P., GOLDSTEIN, RIVERA and SPOLZINO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court