

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

D14057
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_____AD3d_____

Submitted - January 19, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-02047

DECISION & ORDER

Raymond Ramos, plaintiff-respondent, v DEGI
Deutsche Gesellschaft Fuer Immobilienfonds
MBH, defendant third-party plaintiff-respondent,
Jones Lang Lasalle Americas, Inc., et al., defendants-
respondents, Advance Construction Concepts, Inc.,
third-party defendant-appellant.

(Index No. 29802/04)

White & McSpedon, P.C., New York, N.Y. (Tracey Lyn Jarzombek of counsel), for
third-party defendant-appellant.

Spencer H. Herman, P.C., Kew Gardens, N.Y., for plaintiff-respondent.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (Michael L.
Boulhosa, James P. Tyrie, and Debra A. Adler of counsel), for defendant third-party
plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendant
appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County
(Martin, J.), dated January 23, 2006, as denied that branch of its motion which was for summary
judgment dismissing the third-party cause of action for contractual indemnification with leave to

February 27, 2007

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FUER IMMOBILIENFONDS MBH

renew upon completion of discovery and that branch of its motion which was for summary judgment dismissing the third-party causes of action for common-law indemnification and contribution and all cross claims against it.

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

The Supreme Court properly denied that branch of the appellant's motion which was for summary judgment dismissing the third-party cause of action for contractual indemnification "with leave to renew when discovery, including examinations before trial of all parties, is complete." With regard thereto, summary judgment would have been premature since substantial discovery remained outstanding (*see Great South Bay Family Med. Prac. v Raynor*, 35 AD3d 805; *Rupp v City of Port Jervis*, 10 AD3d 391, 392).

With regard to that branch of the appellant's motion which was to dismiss the third-party causes of action for common-law indemnification and contribution on the ground that the plaintiff's injuries did not fall within the definition of "grave injury" as defined by Workers' Compensation Law § 11, the appellant met its initial burden of demonstrating its entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Marshall v Arias*, 12 AD3d 423, 424; *Fitzpatrick v Chase Manhattan Bank*, 285 AD2d 487, 488; *Ibarra v Equipment Control*, 268 AD2d 13, 17). In opposition, the plaintiff raised a triable issue of fact.

SCHMIDT, J.P., RIVERA, COVELLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court