

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

D14717
W/gts

_____AD3d_____

Submitted - March 8, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2006-01104

DECISION & ORDER

Fremont Realty, Inc., appellant, v
P&N Iron Works, Inc., et al., defendants,
USI Securities, Inc., respondent.

(Index No. 04528/04)

Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, White Plains, N.Y. (Gregory J. Spaun of counsel), for appellant.

Traub Eglin Lieberman Straus LLP, Hawthorne, N.Y. (Jonathan R. Harwood of counsel), for respondent.

In an action, inter alia, to recover damages for negligence in the procurement of insurance coverage and breach of contract, the plaintiff appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered December 20, 2005, which granted the motion of the defendant USI Securities, Inc., for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

On its motion for summary judgment dismissing the complaint insofar as asserted against it, the defendant USI Securities, Inc. (hereinafter USI), which was the plaintiff's insurance broker, demonstrated its entitlement to judgment as a matter of law by submitting evidence establishing that the plaintiff did not specifically request that it procure certain additional insurance coverage, and that it did not have a "special relationship" with the plaintiff that would have required it to advise the plaintiff to obtain that coverage (*see Murphy v Kuhn*, 90 NY2d 266, 270; *Loevner*

April 10, 2007

FREMONT REALTY, INC. v P&N IRON WORKS, INC.

Page 1.

v Sullivan & Strauss Agency, Inc., 35 AD3d 392, 393, *lv denied* _____NY3d_____ [March 27, 2007]; *Curiel v State Farm Fire & Cas. Co.*, 35 AD3d 343; *Tappan Wire & Cable v County of Rockland*, 305 AD2d 665, 666; *Storybook Farms v Ruchman Assoc.*, 284 AD2d 450, 451; *M & E Mfg. Co. v Frank H. Reis, Inc.*, 258 AD2d 9, 11). Since, in opposition to that showing, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), the Supreme Court correctly granted USI's motion for summary judgment dismissing the complaint insofar as asserted against it.

CRANE, J.P., KRAUSMAN, COVELLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court