

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

D17708
X/prt

_____AD3d_____

Argued - December 6, 2007

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-05319

DECISION & ORDER

Guideone Insurance Company, appellant,
v Evangelical Lutheran Bethlehem Congregational
Church, et al., respondents.

(Index No. 19143/06)

Lawrence N. Rogak, LLC, Oceanside, N.Y. (Renee A. Breitner of counsel), for
appellant.

Joseph N. DiGrazia, Brooklyn, N.Y. (Louis R. Lombardi of counsel), for respondent
Guy Coleman.

In an action for a judgment declaring, inter alia, that the plaintiff is not obligated to defend and indemnify the defendants Evangelical Lutheran Bethlehem Congregational Church, Bethlehem Evangelical Lutheran Church, and Bay Ridge Center for Older Adults in an underlying personal injury action commenced by the defendant Guy Coleman entitled *Coleman v Evangelical Lutheran Bethlehem Congregational Church, et al.*, pending in the Supreme Court, Kings County, under Index No. 11239/06, the plaintiff appeals from an order of the Supreme Court, Kings County (Held, J.), dated May 15, 2007, which, among other things, denied its motion for summary judgment.

ORDERED that the order is affirmed, with costs to the respondent Guy Coleman.

The plaintiff failed to meet its burden of establishing entitlement to judgment as a

January 29, 2008

Page 1.

GUIDEONE INSURANCE COMPANY v EVANGELICAL LUTHERAN BETHLEHEM
CONGREGATIONAL CHURCH

matter of law. The plaintiff failed to support its motion for summary judgment with any competent evidence in admissible form establishing the validity of its disclaimer of coverage (*see Zuckerman v City of New York*, 49 NY2d 557, 562; *Batista v Santiago*, 25 AD3d 326). Accordingly, the plaintiff's motion for summary judgment was properly denied, regardless of the sufficiency of the opposition papers (*see Ayotte v Gervasio*, 81 NY2d 1062).

MASTRO, J.P., FISHER, CARNI and McCARTHY, 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