

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

D19261
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_____AD3d_____

Argued - April 17, 2008

ROBERT A. SPOLZINO, J.P.
EDWARD D. CARNI
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-09803

DECISION & ORDER

State Farm Insurance Company, appellant, v
I. Aracena-Almonte, a/k/a Almonte I. Aracena,
et al., defendants, Laneide Montero, respondent.

(Index No. 13755/05)

Rivkin Radler LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, and Stuart M. Bodoff of counsel), for appellant.

Sanford L. Pirotin, P.C., Westbury, N.Y. (William S. Kanas of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the plaintiff is not obligated to defend or indemnify the defendants in an underlying action entitled *Montero v Malik*, pending in the Supreme Court, Nassau County, under Index No. 6634/05, the plaintiff appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Nassau County (Lally, J.), entered October 3, 2007, as granted that branch of the motion of the defendant Laneide Montero which was pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against him unless the plaintiff provided him with a copy of its “Claims Procedure Guide.”

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Laneide Montero which was to dismiss the complaint insofar as asserted against him unless the plaintiff provided him with a copy of its “Claims Procedure Guide” is denied.

In this action for a declaratory judgment, the plaintiff alleged that an automobile collision was intentional and not an accident. The defendant Laneide Montero (hereinafter the

defendant) failed to establish the relevancy of the plaintiff's "Claims Procedure Guide" to the issues to be decided in this action. Since the defendant was not entitled to discovery of such document, the Supreme Court erred in granting that branch of his motion which was pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against him unless the plaintiff provided him with the document (*see Donskoi v Donskoi*, 38 AD3d 708; *cf. Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531).

SPOLZINO, J.P., CARNI, DICKERSON and ENG, 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