

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

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Y/kmg

_____AD3d_____

Argued - October 21, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2008-03067

DECISION & ORDER

R&L Richmond Avenue Corp., respondent,
v Public Service Mutual Insurance Company,
appellant.

(Index No. 103777/06)

Weber Gallagher Simpson Stapleton Fires & Newby, LLP, New York, N.Y. (Michael S. Savett of counsel), for appellant.

Allyn J. Crawford, Staten Island, N.Y. (Kerri Bringslid of counsel), for respondent.

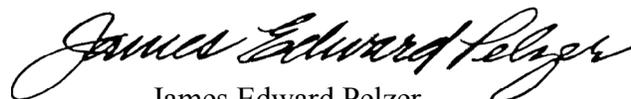
In an action, inter alia, for a judgment declaring that the defendant is obligated to defend and indemnify the plaintiff in an underlying personal injury action entitled *Velasquez v Holiday Plaza, LLC*, pending in the Supreme Court, Richmond County, under Index No. 102441/06, the defendant appeals from an order of the same court (Maltese, J.), dated February 25, 2008, which denied its motion for summary judgment.

ORDERED that the order is affirmed, with costs.

In opposition to the defendant insurer's prima facie showing of entitlement to judgment as a matter of law based upon the plaintiff's eight-month delay in reporting the underlying occurrence to it, the plaintiff raised a triable issue of fact as to whether the delay was reasonable, based upon a good faith belief in its nonliability. Under these circumstances, the Supreme Court properly denied the defendant's motion for summary judgment (*see St. James Mech., Inc. v Royal & Sunalliance*, 44 AD3d 1030, 1031-1032; *Genova v Regal Mar. Indus.*, 309 AD2d 733).

SPOLZINO, J.P., FLORIO, McCARTHY and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 18, 2008

R&L RICHMOND AVE. CORP. v PUBLIC SERVICE MUTUAL INSURANCE COMPANY