

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

D23556
W/kmg

_____AD3d_____

Argued - May 11, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-10905

DECISION & ORDER

George Cassidy, appellant, v Allstate Insurance
Company, respondent.

(Index No. 6045/07)

Joseph H. Dirks, P.C., Brooklyn, N.Y., for appellant.

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Charles W. Benton of counsel), for
respondent.

In an action to recover damages for breach of a contract of insurance, the plaintiff
appeals from an order of the Supreme Court, Kings County (Martin, J.), dated October 3, 2008,
which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the plaintiff's motion for summary judgment on
the issue of liability on the ground that there is a triable issue of fact as to whether the insured made
material misrepresentations concerning the loss for which coverage is sought. To the extent that the
parties present conflicting evidence, it is clear that resolution of the issue will require credibility
determinations, which are not proper on a motion for summary judgment, with limited exceptions not
applicable here (*see 6243 Jericho Realty Corp. v Autozone, Inc.*, 27 AD3d 447).

SKELOS, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 16, 2009

CASSIDY v ALLSTATE INSURANCE COMPANY