

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

D25284
O/kmg

_____AD3d_____

Argued - November 10, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2009-00433

DECISION & ORDER

Classon Realty Corp., respondent, v Tower
Insurance Company of New York, appellant.

(Index No. 32189/05)

Max W. Gershweir, New York, N.Y., for appellant.

Abraham, Lerner & Arnold, LLP, New York, N.Y. (James M. O'Connor of counsel),
for respondent.

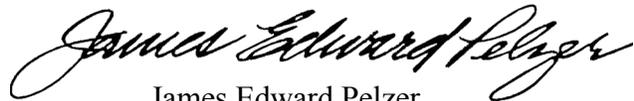
In an action to recover damages for breach of a contract of insurance, the defendant
appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated November 21, 2008,
which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The proponent of a motion for summary judgment must establish its entitlement to
judgment as a matter of law by demonstrating that there are no triable issues of fact (*see Winegrad
v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). The defendant failed to demonstrate that there are
no triable issues of fact regarding whether the plaintiff insured made material misrepresentations
during the defendant's investigation of the plaintiff's claim (*see Christophersen v Allstate Ins. Co.*,
34 AD3d 515; *Fine v Bellefonte Underwriters Ins. Co.*, 725 F2d 179, 183, *cert denied* 469 US 874).
Accordingly, the Supreme Court properly denied the defendant's motion for summary judgment
dismissing the complaint.

FISHER, J.P., ANGIOLILLO, LOTT and SGROI, JJ., concur.

ENTER:


James Edward Pelzer

December 8, 2009

CLASSON REALTY CORP. v TOWER INSURANCE COMPANY OF NEW YORK

Clerk of the Court

December 8, 2009

CLASSON REALTY CORP. v TOWER INSURANCE COMPANY OF NEW YORK