

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

D25424  
G/kmg

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Argued - November 10, 2009

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

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2008-08323

DECISION & ORDER

George Stilianudakis, respondent, v Tower Insurance  
Company of New York, defendant, Avenia Ins.  
Agency, Inc., appellant.

(Index No. 1445/08)

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Milber Makris Plouasdis & Seiden, LLP, Woodbury, N.Y. (Lorin A. Donnelly and  
Sarah M. Ziolkowski of counsel), for appellant.

Sacco & Fillas, LLP, Whitestone, N.Y. (Luigi Brandimarte of counsel), for  
respondent.

In an action, inter alia, to recover damages for negligent misrepresentation, the defendant Avenia Ins. Agency, Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Weiss, J.), entered July 31, 2008, as denied that branch of its motion which was to dismiss the third cause of action to recover damages for negligent misrepresentation pursuant to CPLR 3211(a)(7).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Avenia Ins. Agency, Inc., which was to dismiss the third cause of action to recover damages for negligent misrepresentation pursuant to CPLR 3211(a)(7) is granted.

“A claim for negligent misrepresentation requires the plaintiff to demonstrate (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the

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information” (*J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148). Here, the plaintiff failed to allege any misrepresentation on the part of the defendant Avenia Ins. Agency, Inc. (hereinafter the appellant), which procured an insurance policy on his behalf to cover his building (*see Wong v Gottbetter*, 18 AD3d 541; *cf. Ambrosino v Exchange Ins. Co.*, 265 AD2d 627), or the existence of a special relationship with the appellant upon which a cause of action alleging negligent misrepresentation could be predicated (*see Hoffend & Sons, Inc. v Rose & Kiernan, Inc.*, 7 NY3d 152; *Murphy v Kuhn*, 90 NY2d 266; *Kay Bee Bldrs., Inc. v Merchant's Mut. Ins. Co.*, 61 AD3d 720, 722; *Curiel v State Farm Fire & Cas. Co.*, 35 AD3d 343; *Duratech Indus., Inc. v Continental Ins. Co.*, 21 AD3d 342, 345).

Moreover, to the extent that the third cause of action asserted against the appellant can be construed as one alleging negligent procurement of a policy, it must nevertheless fail because, having received the policy more than two years prior to the fire, the plaintiff is conclusively presumed to have read and assented to its terms (*see Loevner v Sullivan & Strauss Agency, Inc.*, 35 AD3d 392, 395; *Busker on Roof Ltd. Partnership Co. v Warrington*, 283 AD2d 376, 377; *Rotanelli v Madden*, 172 AD2d 815).

The appellant’s remaining contention is not properly before this Court.

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

ENTER:



James Edward Pelzer  
Clerk of the Court