

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

D27191  
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Argued - March 23, 2010

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
ANITA R. FLORIO  
RUTH C. BALKIN, JJ.

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2009-04250

DECISION & ORDER

Francis Megafu, appellant, v Tower Insurance  
Company of New York, respondent.

(Index No. 35362/06)

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I. Eric Abakporp, Brooklyn, N.Y., for appellant.

Max W. Gershweir, New York, N.Y. (Joseph S. Wiener of counsel), for respondent.

In an action to recover damages for breach of an insurance policy, the plaintiff appeals from an order of the Supreme Court, Kings County (Starkey, J.), dated April 1, 2009, which denied his motion for summary judgment on the complaint and granted the defendant's cross motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Zuckerman v City of New York*, 49 NY2d 557, 562). Here, in support of its cross motion for summary judgment, the defendant made a prima facie showing of its entitlement to judgment as a matter of law by demonstrating that it properly concluded that the subject premises were not covered under the policy at issue, and that it properly disclaimed coverage on that basis (*see Marshall v Tower Ins. Co. of N.Y.*, 44 AD3d 1014, 1015). The plaintiff failed to raise a triable issue of fact in opposition to the cross motion, or make a prima facie showing in support of his own motion for summary judgment on the complaint.

Accordingly, the Supreme Court properly denied the plaintiff's motion for summary

May 4, 2010

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judgment on the complaint, and properly granted the defendant's cross motion for summary judgment dismissing the complaint.

The plaintiff's remaining contentions are either not properly before this Court, or without merit.

RIVERA, J.P., DILLON, FLORIO and BALKIN, 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