

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

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_____AD3d_____

Argued - November 4, 2010

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-08861

DECISION & ORDER

James P. McGowan, et al., respondents, v Great Northern Insurance Company, appellant, et al., defendant.

(Index No. 1852/08)

Tell, Cheser & Breitbart, Garden City, N.Y. (Kenneth R. Feit of counsel), for appellant.

Jeffrey I. Baum & Associates, P.C., Garden City, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendant Great Northern Insurance Company appeals, as limited by its letter to this Court dated October 25, 2010, from so much of an order of the Supreme Court, Nassau County (Iannacci, J.), entered August 19, 2009, as denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the appellant's motion which was for summary judgment dismissing the third cause of action insofar as asserted against it for failure to state a cause of action and substituting therefor a provision granting that branch of the appellant's motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court should have granted that branch of the appellant's motion which was for summary judgment dismissing the plaintiffs' third cause of action insofar as asserted against it for failure to state a cause of action (*see Light v Light*, 64 AD3d 633). There is no separate cause

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of action in tort for an insurer's failure to perform its obligations under an insurance contract (*see Zawahir v. Berkshire Life Insurance Co.*, 22 AD3d 841, 842).

The appellant's remaining contentions are without merit.

DILLON, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court