

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

D30558
W/prt

_____AD3d_____

Argued - February 24, 2011

REINALDO E. RIVERA, J.P.
MARK C. DILLON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-04917

DECISION & ORDER

Sean Kennedy, respondent, v Chaudhry M. Arif,
defendant; Motor Vehicle Accident Indemnification
Corporation, nonparty-appellant.

(Index No. 6539/07)

Cruz & Gangi (Kornfeld, Rew, Newman & Simeone, Suffern, N.Y. [William S. Badura], of counsel), for nonparty-appellant.

Lozner & Mastropietro (Pollack, Pollack, Isaac & DeCicco, New York, N.Y. [Brian J. Isaac and Jillian Rosen], of counsel), for respondent.

In an action to recover damages for personal injuries, nonparty Motor Vehicle Accident Indemnification Corporation appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated April 8, 2010, which granted the plaintiff's motion to compel it to satisfy a judgment against the defendant Chaudhry M. Arif to the extent of compelling it to interpose an answer to the complaint.

ORDERED that the order is affirmed, with costs.

Under the facts of this case, the Supreme Court properly directed the Motor Vehicle Accident Indemnification Corporation (hereinafter MVAIC) to interpose an answer to the complaint (*see* Insurance Law § 5214; *see generally* *Tirado v Miller*, 75 AD3d 153). MVAIC's contention that the plaintiff's motion should have been denied because he failed to comply with Insurance Law § 5208, is raised for the first time on appeal and, thus, is not properly before this Court (*see Luciano*

March 22, 2011

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v Our Lady of Sorrows School, 79 AD3d 705; *Spagnole v Staten Is. Univ. Hosp.*, 77 AD3d 816; *Matter of Insurance Co. of N. Am. v Kaplun*, 274 AD2d 293, 299-300).

RIVERA, J.P., DILLON, HALL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court