

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

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Submitted - March 11, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RUTH C. BALKIN
ROBERT J. MILLER, JJ.

2010-04672

DECISION & ORDER

Joseph Huguens, plaintiff, v Village of Spring Valley, et al., defendants, Caribreeze Vegetarian Restaurant, defendant third-party plaintiff-appellant; National Fire Insurance of Hartford, third-party defendant-respondent.

(Index No. 950/08)

Goldstein & Metzger, LLP, Poughkeepsie, N.Y. (Paul J. Goldstein of counsel), for defendant third-party plaintiff-appellant.

Colliau Elenius Murphy Carluccio Keener & Morrow, New York, N.Y. (Dean J. Vigliano of counsel), for third-party defendant-respondent.

In an action to recover damages for personal injuries, the defendant third-party plaintiff appeals from an order of the Supreme Court, Rockland County (Garvey, J.), dated February 25, 2010, which denied its motion for summary judgment on its third-party cause of action for reimbursement of its defense expenses in the main action, and granted the third-party defendant's cross motion for summary judgment dismissing the third-party complaint.

ORDERED that the order is affirmed, with costs.

The third-party defendant made a prima facie showing of its entitlement to judgment as a matter of law, and the defendant third-party plaintiff failed to raise a triable issue of fact in opposition. Contrary to the contention of the defendant third-party plaintiff, the delay of the third-party defendant in issuing the disclaimer of coverage in this case was not unreasonable. The third-

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party defendant presented ample evidence demonstrating, as a matter of law, that the delay was reasonably related to a prompt, diligent, and necessary investigation it conducted into the question of whether the third-party plaintiff unduly and inexcusably delayed in providing it with notice of the lawsuit, in violation of the applicable insurance policy (*see Magistro v Buttered Bagel, Inc.*, 79 AD3d 822, 825; *Matter of GMAC Ins. Co. v Jones*, 61 AD3d 1358, 1360-1361; *Tully Constr. Co., Inc. v TIG Ins. Co.*, 43 AD3d 1150, 1153; *Ace Packing Co., Inc. v Campbell Solberg Assoc., Inc.*, 41 AD3d 12, 14). Since the third-party defendant promptly disclaimed coverage on the ground of late notice only eight days after the conclusion of its investigation, the Supreme Court properly determined that the disclaimer was valid (*see Tully Constr. Co., Inc. v TIG Ins. Co.*, 43 AD3d at 1153; *Ace Packing Co., Inc. v Campbell Solberg Assoc., Inc.*, 41 AD3d at 14).

MASTRO, J.P., DILLON, BALKIN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court