

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

D31227  
W/kmb

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Argued - April 15, 2011

WILLIAM F. MASTRO, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
ARIEL E. BELEN, JJ.

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2010-08494

DECISION & ORDER

One Beacon Insurance Company, as subrogee of  
Howard Blady, respondent, v CMB Contracting Corp.,  
doing business as Mid Island Contractors, Inc., appellant.

(Index No. 17836/08)

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Nicolini, Paradise, Ferretti & Sabella, Mineola, N.Y. (John J. Nicolini of counsel), for appellant.

Sheps Law Group, P.C., Melville, N.Y. (Robert C. Sheps of counsel), for respondent.

In a subrogation action, inter alia, to recover damages for negligence, the defendant appeals from an order of the Supreme Court, Nassau County (Marber, J.), entered July 21, 2010, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The house of the plaintiff's insured, Howard Blady, was damaged as a result of a fire that broke out on the second floor, which was under renovation. Blady had retained the defendant to perform renovation work at the house. On the day of the fire, the defendant's workers left the premises at 5:00 P.M., Blady and his wife visited the premises between 6:00 P.M. and 7:00 P.M., and the local fire department was notified of the fire at approximately 10:30 P.M. The fire department could not determine the cause of the fire.

The defendant established its entitlement to judgment as a matter of law by submitting evidence sufficient to demonstrate that none of its acts or omissions caused or contributed to the fire

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that damaged Blady's property (*see Cataract Metal Finishing, Inc. v City of Niagara Falls*, 31 AD3d 1129; *Easy Shopping Corp. v Sneakers Ctr. & Sports*, 303 AD2d 361; *Tower Ins. Co. of N.Y. v M.B.G. Inc.*, 288 AD2d 69). In opposition, the plaintiff failed to raise a triable issue of fact. Contrary to the plaintiff's contention, the doctrine of *res ipsa loquitur* is inapplicable to this case since there was no basis for finding that the origin of the fire was due to negligence (*see North Star Contr. Corp. v Burton F. Clark, Inc.*, 214 AD2d 550; *Board of Educ. of Ellenville Cent. School v Herb's Dodge Sales & Serv.*, 79 AD2d 1049; *Schultheis v Pristouris*, 45 AD2d 864).

Accordingly, the defendant's motion for summary judgment dismissing the complaint should have been granted.

MASTRO, J.P., BALKIN, LEVENTHAL and BELEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court