

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

D31384  
O/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 29, 2011

WILLIAM F. MASTRO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2010-06006

DECISION & ORDER

Patricia Sandiford, respondent, v Robert Kahn, et al.,  
defendants, Millennium Abstract Corp., appellant.  
(and other titles)

(Index Nos. 39293/05, 75120/06, 75325/08)

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Mark L. Lubelsky, New York, N.Y., for appellant.

Evan Sarzin, P.C., New York, N.Y. (Karen Elyse Goldman of counsel), for  
respondent.

In an action to recover damages for fraud and negligence, the defendant Millenium Abstract Corp. appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated March 16, 2010, as denied its motion for summary judgment dismissing the complaint insofar as asserted against it and pursuant to CPLR 1003 to dismiss the complaint insofar as asserted against it for failure to join a necessary party.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the motion of the defendant Millenium Abstract Corp. (hereinafter Millenium) which was for summary judgment dismissing the complaint insofar as asserted against it. Millenium failed to meet its prima facie burden on that branch of the motion because its own submissions raised triable issues of fact as to whether it breached a duty of care to the plaintiff by allegedly producing inaccurate or falsified documents upon which the plaintiff claims she reasonably relied at the subject real estate closing. Because Millenium failed to

May 24, 2011

SANDIFORD v KAHN

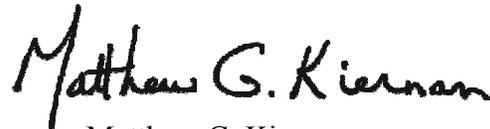
Page 1.

meet its prima facie burden, the sufficiency of the plaintiff's opposition papers need not be addressed (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Millenium's additional contention that the complaint must be dismissed insofar as asserted against it for failure to join an alleged joint tortfeasor as a necessary party is without merit (see CPLR 1001[a]; *Hecht v City of New York*, 60 NY2d 57, 62; *Ferriola v DiMarzio*, \_\_\_\_\_ AD3d \_\_\_\_\_, 2011 NY Slip Op 02841 [2d Dept 2011]); *Wolstencroft v Sassower*, 124 AD2d 582).

MASTRO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court