

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

D32407
N/prt

_____AD3d_____

Argued - September 15, 2011

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-05121

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 brief, from so much of an order of the Supreme Court, Nassau County (Iannacci, J.), entered May 5, 2010, as granted that branch of the plaintiffs' motion which was to quash subpoenas served on certain witnesses of the plaintiffs directing such witnesses to appear for depositions.

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

Since the persons upon whom the appellant served the subject subpoenas are expert witnesses (*see Russo v Quincy Mut. Fire Ins. Co.*, 256 AD2d 1164), the appellant was required to make a showing of special circumstances warranting depositions of those witnesses (*see CPLR 3101[d][1][iii]*; *Kooper v Kooper*, 74 AD3d 6, 12, 16). The appellant failed to establish the existence of such circumstances, and thus the Supreme Court properly granted that branch of the plaintiffs' motion which was to quash the subject subpoenas (*see CPLR 3101[d][1][iii]*; *Fekete v GA*

October 4, 2011

Page 1.

McGOWAN v GREAT NORTHERN INSURANCE COMPANY

Ins. Co. of N.Y., 279 AD2d 300; *Russo v Quincy Mut. Fire Ins. Co.*, 256 AD2d at 1164).

PRUDENTI, P.J., RIVERA, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court