

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

D32683
O/ct

_____AD3d_____

Argued - October 4, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2010-10160

DECISION & ORDER

Meserole Factory, LLC, appellant, v Arch Insurance
Group, etc., et al., respondents.

(Index No. 24875/09)

Jeffrey A. Sunshine, P.C., Lake Success, N.Y., for appellant.

White, Fleischer & Fino, LLP, New York, N.Y. (Jonathan S. Chernow and Eric R.
Leibowitz of counsel), for respondents.

In an action to recover damages for breach of an insurance contract, the plaintiff
appeals from an order of the Supreme Court, Kings County (Jacobson, J.), dated August 25, 2010,
which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the defendants' motion for summary judgment
dismissing the complaint. The defendants established their prima facie entitlement to judgment as
a matter of law by demonstrating that the plaintiff failed to provide the defendant Arch Specialty
Insurance Company with a sworn proof-of-loss statement within 60 days after receiving a demand
to do so, accompanied by proof-of-loss forms (*see* Insurance Law § 3407[a]; *Ball v Allstate Ins. Co.*,
81 NY2d 22, 25-26; *Anthony Marino Constr. Corp. v INA Underwriters Ins. Co.*, 69 NY2d 798, 800;
Maleh v New York Prop. Ins. Underwriting Assn., 64 NY2d 613, 614; *DeRenzis v Allstate Ins. Co.*,
256 AD2d 303, 304; *Litter v Allstate Ins. Co.*, 208 AD2d 602). In opposition, the plaintiff failed to
raise a triable issue of fact.

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In light of this determination, the plaintiff's remaining contention need not be reached.

DILLON, J.P., BALKIN, ENG and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court