

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

D33036
C/nl

_____AD3d_____

Argued - October 28, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-05628

DECISION & ORDER

Motor Parkway Enterprises, Inc., appellant, v Loyd
Keith Friedlander Partners, Ltd., et al., respondents.

(Index No. 29443/09)

Kenneth Geller, P.C., Inwood, N.Y., for appellant.

Milber, Makris, Plousadis & Seiden, LLP, Woodbury, N.Y. (Lorin A. Donnelly and
Heather A. Morante of counsel), for respondents.

In an action to recover damages for negligent procurement of insurance coverage, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Emerson, J.), dated April 16, 2010, which granted that branch of the defendants' motion which was, in effect, pursuant to CPLR 3211(a)(1) to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly granted that branch of the defendants' motion which was, in effect, pursuant to CPLR 3211(a)(1) to dismiss the complaint. The documentary evidence submitted by the defendants, including the application for insurance signed by the plaintiff's president and the resulting policy of insurance furnished by the defendants to the plaintiff, conclusively disposed (*see Leon v Martinez*, 84 NY2d 83, 88; *Fontanetta v John Doe I*, 73 AD3d 78, 83) of the plaintiff's claims that the defendants procured insurance coverage in an amount other than that requested by the plaintiff (*see Sung v Kyung Ip Hong*, 254

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AD2d 271, 272). Moreover, the plaintiff is “conclusively presumed to have read and assented to the terms of the . . . policy” (*Loevner v Sullivan & Strauss Agency, Inc.*, 35 AD3d 392, 394; *see Portnoy v Allstate Indem. Co.*, 82 AD3d 1196, 1198; *Maple House, Inc. v Alfred F. Cypes & Co., Inc.*, 80 AD3d 672; *Stilianudakis v Tower Ins. Co. of N.Y.*, 68 AD3d 973, 974; *Catalanotto v Commercial Mut. Ins. Co.*, 285 AD2d 788, 790-791; *Rotanelli v Madden*, 172 AD2d 815), and therefore cannot claim that it believed that it possessed greater coverage than that set forth in the policy.

The plaintiff’s remaining contentions are either improperly raised for the first time on appeal or without merit.

MASTRO, J.P., CHAMBERS, SGROI and MILLER, 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