

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

D33193
O/kmb

_____AD3d_____

Argued - November 3, 2011

DANIEL D. ANGIOLILLO, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10003

DECISION & ORDER

Fine Line Builders & Remodelers, Inc., appellant,
v Atlantic Casualty Insurance Company, respondent.

(Index No. 2234/09)

Barr Post & Associates, PLLC, Spring Valley, N.Y. (Craig A. Post of counsel), for appellant.

Milber, Makris, Plousadis & Seiden, LLP, Woodbury, N.Y. (Lorin A. Donnelly of counsel), for respondent.

In an action for a judgment declaring that the defendant is obligated to defend and indemnify the plaintiff in an underlying action entitled *Shortell v Swanson Consulting, Inc.*, commenced in the Supreme Court, Rockland County, under Index No. 5964/07, the plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Rockland County (Walsh II, J.), dated August 20, 2010, which denied its motion for summary judgment on the complaint, granted the defendant's cross motion for summary judgment, and declared that the defendant is not obligated to defend and indemnify it in the underlying action.

ORDERED that the order and judgment is affirmed, with costs.

The defendant, Atlantic Casualty Insurance Company (hereinafter Atlantic), established, prima facie, its entitlement to judgment as a matter of law by showing that it properly disclaimed coverage on the ground of late notice of the underlying accident (*see Ciampa 21, LLC v QBE Ins. Corp.*, 81 AD3d 586; *Lobosco v Best Buy, Inc.*, 80 AD3d 728; *Bigman Bros., Inc. v QBE*

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Ins. Corp., 73 AD3d 1110, 1112; *Sputnik Rest. Corp. v United Nat. Ins. Co.*, 62 AD3d 689; *St. James Mech., Inc. v Royal & Sunalliance*, 44 AD3d 1030, 1032; *Felix v Pinewood Bldrs., Inc.*, 30 AD3d 459; *Jordan Constr. Prods. Corp. v Travelers Indem. Co. of Am.*, 14 AD3d 655). In opposition, the plaintiff failed to raise a triable issue of fact (see *Bigman Bros., Inc. v QBE Ins. Corp.*, 73 AD3d at 1112; *Sputnik Rest. Corp. v United Natl. Ins. Co.*, 62 AD3d 689). The plaintiff's claim that it had a reasonable, good faith belief in nonliability was belied by its failure to inquire into the circumstances of the accident at issue in the underlying action (see *Great Canal Realty Corp. v Seneca Ins. Co., Inc.*, 5 NY3d 742, 743; *Security Mut. Ins. Co. of N.Y. v Acker-Fitzsimons Corp.*, 31 NY2d 436, 441; *Hanson v Turner Constr. Co.*, 70 AD3d 641; *York Specialty Food, Inc. v Towers Ins. Co. of N.Y.*, 47 AD3d 589, 590; *St. Nicholas Cathedral of Russian Orthodox Church in N. Am. v Travelers Prop. Cas. Ins. Co.*, 45 AD3d 411; *Felix v Pinewood Bldrs., Inc.*, 30 AD3d at 461). Accordingly, the Supreme Court properly granted Atlantic's cross motion for summary judgment and, for the same reason, properly denied the plaintiff's motion for summary judgment (see *Zimmerman v Peerless Ins. Co.*, 85 AD3d 1021; *Magistro v Buttered Bagel, Inc.*, 79 AD3d 822; *Hanson v Turner Constr. Co.*, 70 AD3d 641).

ANGIOLILLO, J.P., HALL, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court