

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

D33859
G/prt

_____AD3d_____

Argued - January 17, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2011-08932

DECISION & ORDER

Daniel Membreno, plaintiff, v Hack Realty, LLC,
defendant third-party plaintiff-respondent; Bella
Bianchi's Ltd., etc., third-party defendant-appellant.

(Index No. 21522/10)

Gallo, Vitucci & Klar, LLP, New York, N.Y. (Chad E. Sjoquist of counsel), for third-party defendant-appellant.

Purcell & Ingrao, Mineola, N.Y. (Terrance J. Ingrao and Corey Pugliese of counsel), for defendant third-party plaintiff-respondent.

In an action to recover damages for personal injuries, the third-party defendant appeals from an order of the Supreme Court, Queens County (Weiss, J.), entered July 28, 2011, which denied its motion pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint based on the doctrine of res judicata.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the Supreme Court properly denied the third-party defendant's motion pursuant to CPLR 3211(a)(5) to dismiss the third-party complaint based on the doctrine of res judicata (*see generally Matter of People v Applied Card Sys., Inc.*, 11 NY3d 105, 122, *cert denied sub nom. Cross Country Bank, Inc. v New York*, 555 US 1136; *Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 13; *Buechel v Bain*, 97 NY2d 295, 304-305, *cert denied*

February 7, 2012

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535 US 1096; *Johansen v Gillen Living Trust*, 63 AD3d 1006).

DILLON, J.P., LEVENTHAL, BELEN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court