

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

D33903
O/kmb

_____AD3d_____

Argued - January 23, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-01477

DECISION & ORDER

Peters Auto Works, Inc., appellant, v Commonwealth
Land Title Insurance Company, respondent.

(Index No. 12430/10)

Tsingauz & Associates, P.C., New York, N.Y. (Yevgeny Tsingauz and Michael
Treybich of counsel), for appellant.

Edward C. Kesselman, New York, N.Y., for respondent.

In an action to recover damages for breach of a title insurance policy, the plaintiff appeals from an order of the Supreme Court, Kings County (Bayne, J.), dated January 7, 2011, which granted the defendant's motion, inter alia, pursuant to CPLR 3211(a)(1) to dismiss the complaint and denied its cross motion, inter alia, pursuant to CPLR 3212 for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly granted the defendant's motion, inter alia, pursuant to CPLR 3211(a)(1) to dismiss the complaint. The documentary evidence submitted by the defendant conclusively established that the alleged loss suffered by the plaintiff was not covered by the subject title insurance policy (*see* CPLR 3211[a][1]; *Vigilant Ins. Co. v Bear Stearns Cos., Inc.*, 10 NY3d 170, 177; *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326).

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The plaintiff's remaining contentions are without merit.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court