

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

D33968  
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\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 5, 2011

ARIEL E. BELEN, J.P.  
PLUMMER E. LOTT  
SANDRA L. SGROI  
JEFFREY A. COHEN, JJ.

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2010-11032

DECISION & ORDER

Brian Nocella, appellant, v Fort Dearborn Life  
Insurance Company of New York, et al., defendants,  
Emigrant Mortgage Company, Inc., respondent.

(Index No. 437/08)

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Kingsley Kingsley & Calkins, Hicksville, N.Y. (Kevin T. Murtagh and Harold M. Kingsley of counsel), for appellant.

Belkin Burden Wenig & Goldman, LLP, New York, N.Y. (Magda L. Cruz, William M. Rifkin, and Alexa Englander of counsel), for respondent.

In an action, inter alia, to recover benefits under an insurance policy, the plaintiff appeals from an order of the Supreme Court, Nassau County (Diamond, J.), entered October 14, 2010, which, inter alia, granted that branch of the motion of the defendant Emigrant Mortgage Company, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The facts of this case have been set forth in our decision and order in a companion appeal (*see Nocella v Fort Dearborn Life Ins. Co. of N.Y.*, \_\_\_\_\_ AD3d \_\_\_\_\_, Appellate Division Docket No. 2010-01815 [decided herewith]). The defendant Emigrant Mortgage Company, Inc. (hereinafter Emigrant), established its prima facie entitlement to judgment as a matter of law, and the plaintiff failed to raise a triable issue of fact in opposition. Therefore, the Supreme Court

properly granted that branch of Emigrant's motion which was for summary judgment dismissing the complaint insofar as asserted against it (*cf. Baron v Galasso*, 83 AD3d 626).

BELEN, J.P., LOTT, SGROI and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court