

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

D34801
O/nl

_____AD3d_____

Argued - March 29, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2010-06309

DECISION & ORDER

DaimlerChrysler Insurance Company, as subrogee of
DCFS Trust, respondent, v Leslie W. Jenneman, appellant.

(Index No. 46039-08)

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., and
John W. Persons of counsel), for appellant.

Gordon & Haffner, LLP, Harrison, N.Y. (David Gordon of counsel), for respondent.

In an action to recover a settlement payment made in an underlying action to recover
damages for wrongful death, the defendant appeals from an order of the Supreme Court, Suffolk
County (Farneti, J.), dated May 5, 2010, which granted the plaintiff's motion for summary judgment
on the complaint.

ORDERED that the order is affirmed, with costs.

The defendant, Leslie W. Jenneman, leased a Jeep Grand Cherokee from nonparty
DCFS Trust. The plaintiff, DaimlerChrysler Insurance Company, as subrogee of DCFS Trust,
provided insurance coverage to DCFS Trust. While driving the Grand Cherokee on November 20,
2002, Jenneman struck and killed a pedestrian. She was convicted of manslaughter in the second
degree, and this Court affirmed (*see People v Jenneman*, 37 AD3d 736). The pedestrian's estate
sued Jenneman and DCFS Trust for wrongful death, and that case was settled for \$200,000. The
plaintiff paid \$100,000 of that settlement and subsequently commenced this action against Jenneman
to recover the sum it paid toward the settlement, alleging that it became subrogated to DCFS Trust's

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right to common-law indemnification from Jenneman. The plaintiff moved for summary judgment on the complaint on the ground that Jenneman's affirmed conviction entitled it to judgment as a matter of law. In an order dated May 5, 2010, the Supreme Court granted the plaintiff's motion for summary judgment on the complaint. Jenneman appeals, and we affirm.

“[T]he key element of a common-law cause of action for indemnification is not a duty running from the indemnitor to the injured party, but rather is ‘a separate duty owed to the indemnitee by the indemnitor’” (*Raquet v Braun*, 90 NY2d 177, 183, quoting *Mas v Two Bridges Assoc.*, 75 NY2d 680, 690). Indemnity “may be based upon an express contract, but more commonly the indemnity obligation is implied . . . based upon the law’s notion of what is fair and proper as between the parties” (*Mas v Two Bridges Assoc.*, 75 NY2d at 690). “Where a criminal conviction is based upon facts identical to those in issue in a related civil action, the plaintiff in the civil action can successfully invoke the doctrine of collateral estoppel to bar the convicted defendant from relitigating the issue of . . . liability” (*McDonald v McDonald*, 193 AD2d 590, 590; see *City of New York v College Point Sports Assn. Inc.*, 61 AD3d 33, 41).

Here, the plaintiff established, prima facie, that collateral estoppel effect should be given to Jenneman's conviction, and that, as subrogee of DCFS Trust, it is entitled to common-law indemnification from her (see *Blaich v Van Herwynen*, 37 AD3d 387). In opposition, Jenneman failed to raise a triable issue of fact. Therefore, the Supreme Court properly granted the plaintiff's motion for summary judgment on the complaint.

Jenneman's remaining contentions are without merit.

DILLON, J.P., BALKIN, ENG and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court