

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

D35075
W/hu

_____AD3d_____

Argued - April 3, 2012

DANIEL D. ANGIOLILLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-03142

DECISION & ORDER

Nuris Baez, respondent, v First Liberty Insurance
Corporation, appellant.

(Index No. 4272/10)

Feldman, Rudy, Kirby & Farquharson, P.C., Jericho, N.Y. (Bruce W. Farquharson
of counsel), for appellant.

Dina M. DeGiorgio (John V. Decolator, Garden City, N.Y., of counsel), for
respondent.

In an action, inter alia, to recover under an insurance policy, the defendant appeals,
as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Diamond,
J.), dated March 1, 2011, as, upon denying those branches of the plaintiff's cross motion which were
for summary judgment on the first and fourth causes of action, determined that the defendant's
disclaimer of coverage was untimely.

ORDERED that the appeal is dismissed, with costs.

The plaintiff sought coverage under an insurance policy issued by the defendant, and
when the defendant disclaimed coverage, the plaintiff commenced this action to recover under the
policy. Upon denying those branches of the plaintiff's cross motion which were for summary
judgment on the first and fourth causes of action, the Supreme Court, in an order dated March 1,
2011, inter alia, determined that the defendant's disclaimer of coverage was untimely. The defendant
appeals from so much of the order as made that determination. The appeal must be dismissed,
however, as findings of fact and conclusions of law are not independently appealable (*see Soehngen
v Soehngen*, 58 AD3d 829, 830; *Higgins v Higgins*, 50 AD3d 852, 852; *Cosh v Cosh*, 45 AD3d 798,
799; *Griggs v Griggs*, 44 AD3d 710, 711; *ELRAC, Inc. v Belessis*, 303 AD2d 445, 446; *Naar v*

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Litwak & Co., 260 AD2d 613, 614).

To the extent that the defendant raises an argument on appeal regarding its motion for leave to amend its answer, that motion was not addressed by the Supreme Court, and, thus, remains pending and undecided (*see Katz v Katz*, 68 AD2d 536, 542-543).

ANGIOLILLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court