

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

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Submitted - September 6, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-02488

DECISION & ORDER

Northport Land Corp., appellant, v Zurich
North America Insurance, respondent.

(Index No. 14123/08)

Nicholas J. Damadeo, P.C., Huntington, N.Y., for appellant.

Clausen Miller, P.C., New York, N.Y. (Don Ray Sampen, Chicago, Illinois, pro hac vice, Christopher T. Scanlon, and Melinda S. Kollross of counsel), for respondent.

In an action for a judgment declaring that the defendant is obligated to pay, inter alia, the cost of the removal and replacement of certain underground storage tanks and pipes, and to defend and indemnify the plaintiff in any actions arising out of the contamination of property, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Pines, J.), dated January 4, 2011, as granted the defendant's motion for summary judgment, in effect, declaring that it is not so obligated.

ORDERED that the order is affirmed insofar as appealed from, with costs, and the matter is remitted to the Supreme Court, Suffolk County, for the entry of an appropriate declaratory judgment.

The Supreme Court properly granted the defendant's motion for summary judgment. The defendant established, prima facie, that the subject insurance policy did not cover the plaintiff's claims (*see generally Lancer Ins. Co. v Whitfield*, 61 AD3d 724, 725; *Fontanelli v Hanover Ins. Co.*, 48 AD3d 413, 414), and, in opposition, the plaintiff failed to raise a triable issue of fact.

Since this is a declaratory judgment action, the matter must be remitted to the Supreme Court, Suffolk County, for the entry of an appropriate declaratory judgment (*see Lanza v*

Wagner, 11 NY2d 317, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).

DILLON, J.P., DICKERSON, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive style with a large initial 'A'.

Aprilanne Agostino
Clerk of the Court