

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

D36366
T/nl

_____AD3d_____

Submitted - September 10, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2011-06062

DECISION & ORDER

Going 2 Extremes, Inc., et al., appellants, v Hartford
Financial Services Group, Inc., defendant, Trumbull
Insurance Company, respondent.

(Index No. 5127/06)

Tully Rinckey, PLLC, Albany, N.Y. (Douglas J. Rose of counsel), for appellants.

Goldberg Segalla LLP, Buffalo, N.Y. (Carrie Appler and Daniel W. Gerber of
counsel), for respondent.

In an action to recover damages for breach of an insurance contract, the plaintiffs
appeal from an order of the Supreme Court, Orange County (McGuirk, J.), dated March 21, 2011,
which granted the motion of the defendant Trumbull Insurance Company for summary judgment
dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly granted the motion of the defendant Trumbull Insurance
Company (hereinafter Trumbull) for summary judgment dismissing the complaint insofar as asserted
against it. Trumbull established its prima facie entitlement to judgment as a matter of law by
demonstrating that the plaintiffs failed to submit a sworn proof-of-loss statement within 60 days after
receiving a demand to do so, accompanied by a blank proof-of-loss form (*see* Insurance Law §
3407[a]; *Anthony Marino Constr. Corp. v INA Underwriters Ins. Co.*, 69 NY2d 798, 800; *Meserole
Factory, LLC v Arch Ins. Group*, 88 AD3d 967, 967; *DeRenzis v Allstate Ins. Co.*, 256 AD2d 303,
304).

Contrary to the plaintiffs' contention, they failed to raise a triable issue of fact as to whether they substantially complied with Trumbull's demand for a sworn proof-of-loss statement (see *Maleh v New York Prop. Ins. Underwriting Assn.*, 64 NY2d 613, 614; *Darvick v General Acc. Ins. Co.*, 303 AD2d 540; *Agora Intl. v Royal Ins. Co.*, 234 AD2d 489), or whether Trumbull waived the requirement to provide such a statement by repudiating liability (see generally *Igbara Realty Corp. v New York Prop. Ins. Underwriting Assn.*, 63 NY2d 201, 217-218; cf. *Matter of State Farm Ins. Co. v Domotor*, 266 AD2d 219; *Beckley v Ostego County Farmers Coop. Fire Ins. Co.*, 3 AD2d 190).

Accordingly, the Supreme Court properly granted Trumbull's motion for summary judgment dismissing the complaint insofar as asserted against it.

SKELOS, J.P., LEVENTHAL, CHAMBERS and LOTT, 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