

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

D56854
Q/htr

_____AD3d_____

Argued - May 14, 2018

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
SYLVIA O. HINDS-RADIX
FRANCESCA E. CONNOLLY, JJ.

2017-04487

DECISION & ORDER

New York Schools Insurance Reciprocal, etc.,
appellant-respondent, v Milburn Sales Co., Inc., etc.,
respondent-appellant (and third-party actions).

(Index No. 2848/11)

Congdon, Flaherty, O’Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, NY
(Michael T. Reagan of counsel), for appellant-respondent.

Kennedys CMK, New York, NY (Frank J. Wenick of counsel), for respondent-
appellant.

In a subrogation action to recover damages for property damage, the plaintiff appeals and the defendant cross-appeals from an order of the Supreme Court, Suffolk County (James Hudson, J.), dated March 15, 2017. The order, insofar as appealed from, denied the plaintiff’s motion for summary judgment on the issue of liability. The order, insofar as cross-appealed from, denied the defendant’s cross motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

On February 18, 2010, a fire damaged a school in the West Babylon Union Free School District (hereinafter the school district). In the weeks leading up to the fire, various contractors, including the defendant, had performed work at the school. The plaintiff commenced this subrogation action against the defendant to recover damages that the plaintiff had paid to the school district. The plaintiff moved for summary judgment on the issue of liability, and the defendant cross-moved for summary judgment dismissing the complaint. The Supreme Court denied the motion and the cross motion. The plaintiff appeals, and the defendant cross-appeals.

In light of the conflicting expert affidavits submitted by the plaintiff and the defendant in support of their motion and cross motion, respectively, we agree with the Supreme Court's denial of the motion and cross motion (*see e.g. Colao v St. Vincent's Med. Ctr.*, 65 AD3d 660, 662; *Robinson-Reese v Kopp*, 62 AD3d 980, 980; *Lopez v Gem Gravure Co., Inc.*, 50 AD3d 1102, 1103; *Gleeson-Casey v Otis El. Co.*, 268 AD2d 406, 407).

BALKIN, J.P., AUSTIN, HINDS-RADIX and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court