

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

D13044
C/cb

_____AD3d_____

Submitted - October 25, 2006

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT J. LUNN, JJ.

2005-08624

DECISION & ORDER

Jimmy Stefanopoulos, et al., appellants, v Action
Airport Service of L.I., Inc., et al., respondents.

(Index No. 19520/03)

Bachu & Associates, Richmond Hill, N.Y. (Robert A. Siegel of counsel), for appellants.

Cheven, Keely & Hatzis, New York, N.Y. (William B. Stock of counsel), for respondents Lawrence Blessinger, Jr., Ollies Trans., Inc., and Mirza F. Baig.

Shaw, Licitra, Gulotta, Esernio & Schwartz, P.C., Garden City, N.Y. (Roberta L. Clark and Frank J. Livoti of counsel), for respondents Lawrence Blessinger, Sr., and Marianne Blessinger.

In an action, inter alia, to recover damages for violations of General Business Law § 349, the plaintiffs appeal from an order of the Supreme Court, Queens County (Kitzes, J.), dated July 7, 2005, which denied their motion, among other things, to consolidate this action with an action entitled *Stefanopoulos v Ollies Trans.*, pending in the Supreme Court, Kings County, under Index No. 20705/01, and for leave to enter a judgment against all defendants except Lawrence Blessinger, Sr., and Marianne Blessinger upon their failure to appear or answer.

ORDERED that the order is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

Under the circumstances, the court providently exercised its discretion in denying that

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branch of the plaintiffs' motion which was to consolidate this action with an action entitled *Stefanopoulos v Ollies Trans.*, pending in the Supreme Court, Kings County, under Index No. 20705/01 (hereinafter the Kings County action) (*see Beerman v Morhaim*, 17 AD3d 302, 303; *compare Perini Corp. v WDF*, _____AD3d _____ [2d Dept, Oct. 3, 2006]). The court also properly denied the plaintiffs' request for leave to amend the complaint in the Kings County action since the plaintiffs cannot obtain such relief in this action. Moreover, the court properly denied that branch of the plaintiffs' motion which was for leave to enter a judgment against all defendants except Lawrence Blessinger, Sr., and Marianne Blessinger, upon their failure to appear or answer with respect to the original summons and complaint since, during the pendency of the motion, the plaintiffs served an amended summons and complaint (*see generally Weber v Goss*, 18 AD3d 540; *Monter v Massachusetts Mut. Life Ins. Co.*, 12 AD3d 650, 651; *Williams v Feig*, 12 AD3d 504).

SCHMIDT, J.P., RIVERA, SKELOS and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court