

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

D13298  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 16, 2006

ANITA R. FLORIO, J.P.  
WILLIAM F. MASTRO  
ROBERT A. SPOLZINO  
PETER B. SKELOS, JJ.

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2006-00010

DECISION & ORDER

Vincent E. Natoli, et al., respondents, v  
Louis Elias Milazzo, et al., appellants.

(Index No. 38555/04)

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Stavis & Kornfeld, LLP, New York, N.Y. (Oren L. Sibony and Randy Kornfeld of counsel), for appellants.

Wolodymyr M. Starosolsky, New York, N.Y., for respondents.

In an action, inter alia, to enjoin the defendants from operating in or entering the plaintiff Cathedral Church of St. Lucy's, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Lewis, J.), dated October 3, 2005, as (1) denied that branch of their cross motion which was for summary judgment dismissing the complaint, and (2), sua sponte, appointed a receiver to, among other things, oversee the daily operations of the plaintiff Cathedral Church of St. Lucy's.

ORDERED that on the court's own motion, the notice of appeal is treated as an application for leave to appeal from so much of the order as, sua sponte, appointed a receiver, and leave to appeal is granted from that portion of the order (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is modified, on the law and in the exercise of discretion, by deleting the provision thereof appointing a receiver over the plaintiff Cathedral Church of St. Lucy's; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court improvidently exercised its discretion in, sua sponte, appointing

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a receiver over the plaintiff Cathedral Church of St. Lucy's (hereinafter St. Lucy's), since no party asked for that relief and there was no evidence that St. Lucy's assets were susceptible to waste or that such a drastic remedy was warranted (*see Matter of Armienti & Brooks*, 309 AD2d 659; *Rotary Watches [USA] v Greene*, 266 AD2d 527; *Ronan v Valley Stream Realty Co.*, 249 AD2d 288; *Matter of Hessert v Brooklyn Home Dialysis Training Ctr.*, 231 AD2d 719; *Matter of Breiterman v Chemical Bank*, 181 AD2d 675).

The Supreme Court did not err in denying that branch of the defendants' cross motion which was for summary judgment dismissing the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

FLORIO, J.P., MASTRO, SPOLZINO and SKELOS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court