

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

D14634
C/gts

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Submitted - March 7, 2007

WILLIAM F. MASTRO, J.P.
DAVID S. RITTER
PETER B. SKELOS
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2006-05807

DECISION & ORDER

Marie Pierre-Louis, etc., et al., plaintiffs-respondents, v
DeLonghi America, Inc., et al., defendants-respondents,
Antoneen Darden-McCall, s/h/a Antoneen Darden
and Antoneen McCall, et al., appellants.
(Action No. 1)

(Index No. 27690/04)

Tower Insurance Company of New York, etc., appellant,
v DeLonghi America, Inc., et al., respondents.
(Action No. 2)

(Index No. 101636/05)

Allstate Insurance Company, etc., plaintiff-respondent,
v Antoneen Darden, etc., et al., defendants third-
party plaintiffs-appellants, DeLonghi America, Inc.,
et al., defendants third-party defendants-respondents.
(Action No. 3)

(Index No. 403949/05)

April 3, 2007

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PIERRE-LOUIS v DELONGHI AMERICA, INC.
TOWER INSURANCE COMPANY OF NEW YORK v DELONGHI AMERICA, INC.
ALLSTATE INSURANCE COMPANY v DARDEN

Steven G. Fauth (Max W. Gershweir, New York, N.Y. [Jennifer B. Ettenger] of counsel), for appellants in Action Nos. 1, 2, and 3.

Fricke & Solomon, P.C., Staten Island, N.Y. (Robert A. Solomon of counsel), for plaintiffs-respondents in Action No. 1.

Pino & Associates, LLP, White Plains, N.Y. (Marc A. Rousseau and Thomas E. Healy of counsel), for defendants-respondents in Action No. 1, respondents in Action No. 2, and defendants third-party defendants-respondents in Action No. 3.

Feldman & Feldman, LLP, Smithtown, N.Y. (Johanne Tingue of counsel), for plaintiff-respondent in Action No. 3.

In an action, inter alia, to recover damages for wrongful death and personal injuries (Action No. 1), and two subrogation actions to recover insurance benefits paid to the plaintiff's insured (Action Nos. 2 and 3), Antoneen Darden-McCall, s/h/a Antoneen Darden and Antoneen McCall, a defendant in Action No. 1 and a defendant third-party plaintiff in Action No. 3, Marques McCall, s/h/a Marcus McCall, a defendant in Action No. 1 and a defendant third-party plaintiff in Action No. 3, and Matthew McCall, a defendant in Action No. 1, and Tower Insurance Company of New York, the plaintiff in Action No. 2, appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated April 28, 2006, as granted those branches of the motion of the plaintiffs in Action No. 1 which were for a joint trial and discovery of Action No. 1 with Action Nos. 2 and 3.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the motion which was for a joint trial and substituting therefor a provision denying that branch of the motion, with leave to renew upon the completion of discovery; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

Under the circumstances of this case, the actions should have been joined for the purpose of conducting discovery, and the plaintiffs should have been granted leave to renew that branch of the motion which was for a joint trial upon the completion of discovery.

MASTRO, J.P., RITTER, SKELOS, CARNI and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court