

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

D19545  
Y/kmg

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Submitted - May 14, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
HOWARD MILLER  
EDWARD D. CARNI  
RANDALL T. ENG, JJ.

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2007-04765

DECISION & ORDER

Daniel LaRusso, et al., plaintiffs-appellants,  
v Brookstone, Inc., respondent, Salvatore  
Rizzo, defendant-appellant.

(Index No. 13546-05)

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Fishman & Tynan, Merrick, N.Y. (John Fishman of counsel), for defendant-appellant.

Hammill, O'Brien, Croutier, Dempsey & Pender, P.C., Syosset, N.Y. (Maureen Quinn  
of counsel), for respondent.

In an action to recover damages for personal injuries, etc., the defendant Salvatore Rizzo appeals from an order of the Supreme Court, Suffolk County (Weber, J.), dated April 18, 2007, which granted the motion of the defendant Brookstone, Inc., for a protective order pursuant to CPLR 3103, and the plaintiffs separately appeal from the same order.

ORDERED that the appeal by the plaintiffs is dismissed as abandoned (*see* 22 NYCRR 670.8[e]); and it is further,

ORDERED that the order is reversed, on the law and the facts, and the motion by the defendant Brookstone, Inc., for a protective order is denied; and it is further,

ORDERED that one bill of costs is awarded to the defendant Salvatore Rizzo payable by the defendant Brookstone, Inc.

June 10, 2008

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LaRUSSO v BROOKSTONE, INC.

Generally, when a party to the action is to be deposed, the deposition should take place “within the county . . . where the action is pending” (CPLR 3110[1]). An exception to this rule is where a party demonstrates that examination in that county would cause “undue hardship” (*Rodriguez v Infinity Ins. Co.*, 283 AD2d 969, 970; *Farrakhan v N.Y.P. Holdings*, 226 AD2d 133, 135; *cf. Rogovin v Rogovin*, 3 AD3d 352; *Hoffman v Kraus*, 260 AD2d 435, 437). In this case, the defendant Brookstone, Inc., which is headquartered in Merrimack, New Hampshire, failed to demonstrate that the appearance for a deposition in Suffolk County constituted an undue hardship. Therefore, it was not entitled to a protective order.

RIVERA, J.P., LIFSON, MILLER, CARNI and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court