

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

D22339  
G/kmg

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

Submitted - January 15, 2009

A. GAIL PRUDENTI, P.J.  
MARK C. DILLON  
JOSEPH COVELLO  
JOHN M. LEVENTHAL, JJ.

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2007-10442

DECISION & ORDER

Bruce Carey, et al., appellants, v  
Five Brothers, Inc., et al., respondents,  
et al., defendant.

(Index No. 10423/06)

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Mark J. Rayo, P.C., Brooklyn, N.Y. (Louis A. Badolato of counsel), for appellants.

Ahmuty, Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick of counsel),  
for respondent J. Petrocelli Contracting, Inc.

O'Connor, O'Connor, Hintz & Deveney, LLP, Melville, N.Y. (Eileen M.  
Baumgartner of counsel), for respondent Darr Contracting Corp.

Cuttita & Cuttita, LLP, New York, N.Y. (Robert D. Frankfort of counsel), for  
respondents HK New Plan Marwood Sunshine Cheyenne, LLC, and New Plan Excel  
Realty Trust, Inc.

Torino & Bernstein, P.C., Mineola, N.Y. (Bruce Torino of counsel), for respondents  
Stop & Shop Supermarket Company, Stop & Shop Food Stores, Inc., and Stop &  
Shop, Inc.

In a consolidated action to recover damages for personal injuries, etc., the plaintiffs  
appeal from an order of the Supreme Court, Kings County (Ambrosio, J.), dated October 1, 2007,  
which granted the motion of the defendant Darr Contracting Corp. to change the venue of the action  
from Kings County to Suffolk County, and granted the separate motions of the defendants J.

March 10, 2009

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CAREY v FIVE BROTHERS, INC.

Petrocelli Contracting, Inc., and the defendants HK New Plan Marwood Sunshine Cheyenne, LLC, and New Plan Excel Realty Trust, Inc., and that branch of the separate motion of the defendants Stop & Shop Supermarket Company, Stop & Shop Food Stores, Inc., and Stop & Shop, Inc., which were for the same relief, and, in effect, denied their cross motion to retain venue in Kings County or, in the alternative, to change venue to New York County.

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

Under the circumstances, the Supreme Court providently exercised its discretion in changing the venue of this action from Kings County to Suffolk County (*see Canaan v Costco Wholesale Membership, Inc.*, 49 AD3d 583, 584-585; *Clase v Sidoti*, 20 AD3d 330, 331; *Crew v St. Joseph's Med. Ctr.*, 19 AD3d 205, 206; *Halina Yin Fong Chow v Long Is. R.R.*, 202 AD2d 154, 155; *Caplin v Ranhofer*, 167 AD2d 155, 157).

The plaintiffs' remaining contentions are without merit.

PRUDENTI, P.J., DILLON, COVELLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court