

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

D23294
G/hu

_____AD3d_____

Argued - November 6, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
STEVEN W. FISHER
FRED T. SANTUCCI, JJ.

2008-04490

DECISION & ORDER

Thomas E. O'Brien, et al., plaintiffs, the heirs and distributees of Georgiana Walters, etc., respondents,
v Town of Huntington, et al., appellants.

(Index No. 15166/81)

Berkman, Henoch, Peterson & Peddy, P.C., Garden City, N.Y. (Peter Sullivan of counsel), for appellants.

Edward J. Ledogar, West Islip, N.Y., for respondents.

In an action, inter alia, to compel the determination of claims to nine parcels of real property pursuant to RPAPL article 15, the defendants appeal from an order of the Supreme Court, Suffolk County (Whelan, J.), entered April 10, 2008, which denied their motion to vacate so much of a judgment of the same court entered October 30, 2006, as adjudicated the parties' rights as to real property known in this action as "the Walters Parcel No. 8."

ORDERED that the appeal is dismissed, without costs or disbursements.

The appeal is academic in light of our determination in *O'Brien v Town of Huntington* (_____AD3d_____, [Appellate Division Docket Nos. 2006-11982, 2006-11983, 2007-00034, and 2007-05312, decided herewith]).

We decline the respondents' request to impose a sanction against the appellants for bringing an allegedly frivolous appeal (*see* 22 NYCRR 130-1.1).

August 11, 2009

O'BRIEN v TOWN OF HUNTINGTON

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MASTRO, J.P., RIVERA, FISHER and SANTUCCI, JJ., concur.

2008-04490

DECISION & ORDER ON MOTION

Thomas E. O'Brien, et al., plaintiffs, the heirs and distributees of Georgiana Walters, etc., respondents,
v Town of Huntington, et al., appellants.

(Index No. 15166/81)

Motion by the appellants on an appeal from an order of the Supreme Court, Suffolk County, entered April 10, 2008, inter alia, to strike the respondents' brief or stated portions thereof, and for an award of costs. By decision and order on motion of this Court dated August 20, 2008, those branches of the motion were held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that those branches of the motion which are to strike the respondents' brief or stated portions thereof, and for an award of costs are denied.

MASTRO, J.P., RIVERA, FISHER and SANTUCCI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court