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

D25375
O/kmg

_____AD3d_____ Submitted - November 4, 2009

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-04724 DECISION & ORDER

Shari Hughes, respondent, v Vincent M. Pacienza, etc., et al., appellants.
(Action No. 1)

Ellen Moreno, et al., respondents, v Vincent M. Pacienza, etc., et al., appellants.
(Action No. 2)

(Index No. 15629/08)

Albanese & Albanese, LLP, Garden City, N.Y. (Thomas M. Hoey, Jr., of counsel), for appellants.

Kramer & Shapiro, P.C., Kew Gardens, N.Y. (Lisa D. Levine of counsel), for respondent in Action No. 1.

Mango & Iacoviello, LLP, New York, N.Y. (Anthony G. Mango of counsel), for respondents in Action No. 2.

In related actions, inter alia, to recover damages for sexual harassment, the defendants appeal, as limited by their brief, from stated portions of an order of the Supreme Court, Nassau County (Brandveen, J.), dated April 21, 2009, which, among other things, granted that branch of the motion of the plaintiff in Action No. 1 to transfer venue of that action from Nassau County to Kings County.

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

The Supreme Court providently exercised its discretion in granting that branch of the motion of the plaintiff in Action No. 1 to transfer venue of that action from Nassau County to Kings County, since Action No. 2 was commenced in Kings County prior to the commencement of Action No. 1 in Nassau County (*see Strasser v Neuringer*, 137 AD2d 750, 751), and the defendants failed to demonstrate the existence of circumstances which would have warranted transferring venue out of Kings County (*see Gonzalez v Jian Ming Zhou*, 270 AD2d 387; *cf. Gomez v Jersey Coast Egg Producers*, 186 AD2d 629, 630).

The defendants' contentions regarding their separate motions to stay all proceedings pending the determination of a criminal action against the defendant Vincent M. Pacienza, and to quash a subpoena duces tecum that had been served upon a nonparty, are not properly before us, as the Supreme Court did not decide those motions and expressly referred them to the Supreme Court, Kings County, for determination (*see Hawkins-Bond v Konefsky*, 48 AD3d 417; *Katz v Katz*, 68 AD2d 536, 542-543).

The defendants' remaining contentions are without merit.

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court