

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

D26556
G/kmg

_____AD3d_____

Argued - January 29, 2010

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2008-11669

DECISION & ORDER

DKFT Pizza, Inc., d/b/a Domenico's Pizzeria &
Ristorante Antico, et al., respondents, v Riviera
Plaza, LLC, et al., appellants, et al., defendants.

(Index No. 104634/08)

John Z. Marangos, Staten Island, N.Y., for appellants.

Bisogno & Meyerson, LLP, Brooklyn, N.Y. (Saul Fellus of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract and for a permanent injunction compelling the defendants Riviera Plaza, LLC, and Riviera Plaza Associates to terminate their lease with the defendants DCB Food Services Corp., d/b/a Sandella's Café, and Danielle DiBenedetto, the defendants Riviera Plaza, LLC, and Riviera Plaza Associates appeal from an order of the Supreme Court, Richmond County (Fusco, J.), dated December 12, 2008, which granted the plaintiffs' motion for a preliminary injunction to the extent of enjoining the defendants DCB Food Services Corp., d/b/a Sandella's Café, and Danielle DiBenedetto from selling certain food and beverage items at their restaurant within the shopping center owned by the defendants Riviera Plaza, LLC, and Riviera Plaza Associates.

ORDERED that the appeal is dismissed, with costs.

Only "[a]n aggrieved party or a person substituted for him may appeal from any appealable . . . order" (CPLR 5511). "A party is aggrieved by an order when it directly affects that party's individual rights" (*Berrechid v Shahin*, 60 AD3d 884, 884; *see Carollo v Northern Westchester Hosp. Ctr.*, 5 AD3d 715). Since the Supreme Court's order, which preliminarily

March 16, 2010

Page 1.

DKFT PIZZA, INC., d/b/a DOMENICO'S PIZZERIA & RISTORANTE
ANTICO v RIVIERA PLAZA, LLC

enjoined the defendants DCB Food Services Corp., d/b/a Sandella's Cafe, and Danielle DiBenedetto from selling certain food and beverage items at their café, did not affect the rights of the defendants Riviera Plaza, LLC, and Riviera Plaza Associates, the latter two are not aggrieved by the order, and the appeal must be dismissed (*see generally Matter of Commercial Bank of Informatics & Computing Technique Dev. Bank Informtechnika v Ostashko*, 274 AD2d 516; *Law v Benedict*, 197 AD2d 808; *see also Won's Cards v Samsondale/Haverstraw Equities*, 165 AD2d 157, 162).

FLORIO, J.P., ANGIOLILLO, BALKIN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court