

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

D27691
O/prt

_____AD3d_____

Argued - April 30, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2008-02472

DECISION & ORDER

Pinelawn Cemetery, appellant, v Coastal
Distribution, LLC, et al., respondents.

(Index No. 8599/04)

Mark A. Cuthbertson, Huntington, N.Y., for appellant.

John F. McHugh, New York, N.Y., for respondent Coastal Distribution, LLC, and
Glynn Mercep and Purcell, LLP, Stony Brook, N.Y. (A. Craig Purcell of counsel), for
respondent New York and Atlantic Railway (one brief filed).

Jay Safar, Central Islip, N.Y., for respondents Metropolitan Transportation Authority
and Long Island Rail Road Company.

In an action, inter alia, for a judgment declaring that a certain lease dated August 30, 1904, was terminated, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Costello, J.), dated January 8, 2008, which granted the separate motions of the defendants Coastal Distribution, LLC, and New York and Atlantic Railway for summary judgment dismissing the complaint insofar as asserted against each of them and directed the dismissal of the complaint against all of the defendants on the ground that its claims were preempted by that provision of the Interstate Commerce Commission Termination Act which grants exclusive jurisdiction to the United States Surface Transportation Board to regulate transportation by rail carriers.

ORDERED that the appeal is dismissed as academic, without costs or disbursements, in light of our determination on the related appeal (*see Pinelawn Cemetery v Coastal Distribution, LLC*, _____AD3d_____ [Appellate Division Docket No. 2009-02839, decided herewith]).

DILLON, J.P., BALKIN, HALL and LOTT, JJ., concur.

June 8, 2010

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PINELAWN CEMETERY v COASTAL DISTRIBUTION, LLC

2008-02472

DECISION & ORDER ON MOTION

Pinelawn Cemetery, appellant, v Coastal
Distribution, LLC, et al., respondents.

(Index No. 8599/04)

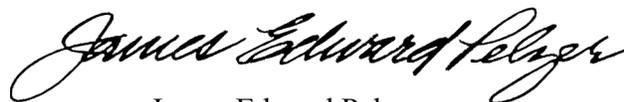
Motion by the appellant on an appeal from an order of the Supreme Court, Suffolk County, dated January 8, 2008, inter alia, to strike the brief filed by the Metropolitan Transportation Authority and the Long Island Rail Road on the ground that those parties are not respondents on the appeal. By decision and order on motion of this Court dated July 1, 2009, that branch of the motion was held in abeyance and referred to the panel of Justices hearing the appeal for a 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 the branch of the motion which is to strike the brief filed by the Metropolitan Transportation Authority and the Long Island Rail Road is denied as academic in light of the dismissal of the appeal (*see Pinelawn Cemetery v Coastal Distribution, LLC*, ___ AD3d ___ decided herewith).

DILLON, J.P., BALKIN, HALL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court