

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

D28006  
Y/prt

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

Argued - March 18, 2010

WILLIAM F. MASTRO, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

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2009-07508

DECISION & ORDER

Ray Haber, et al., plaintiffs/counterclaim defendants  
third-party plaintiffs-appellants, v Betty Cohen, et al.,  
defendants/counterclaim plaintiffs-respondents;  
MRC II, Inc., et al., third-party defendants-respondents.

(Index No. 1033/05)

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Seyfarth Shaw, LLP, New York, N.Y. (Richard M. Resnik and Eddy Salcedo of counsel), for plaintiffs/counterclaim defendants third-party plaintiffs-appellants.

Weg & Meyers, P.C., New York, N.Y. (Dennis T. D'Antonio, Joshua Mallin, and Jonathan C. Corbett of counsel), for defendants/counterclaim plaintiffs-respondents.

Anderson & Ochs, LLP, New York, N.Y. (Mitchel H. Ochs of counsel), for third-party defendants-respondents H. S. Jessup Architecture and Henry S. Jessup, P.C.

In an action, inter alia, to recover damages for negligence and trespass and a third-party action for indemnity and contribution, the plaintiffs/counterclaim defendants appeal from an order of the Supreme Court, Kings County (Schack, J.), entered August 10, 2009, which granted the motion of the defendants/counterclaim plaintiffs pursuant to CPLR 603 and 1010 to sever the third-party action.

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

The plaintiffs commenced this action against the defendant prospective neighbors, inter

alia, to recover damages for negligence and trespass, and to enjoin them from trespassing and unlawfully interfering with the construction of the plaintiffs' new home and to remove a conceded encroachment on the plaintiffs' property.

The defendants counterclaimed to impose strict liability for the plaintiffs' alleged violation of the New York City Administrative Code, recover damages for negligence and trespass, and obtain a permanent injunction precluding the plaintiffs from trespassing on the defendants' property.

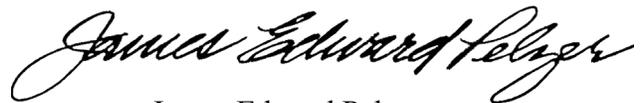
The plaintiffs, in their capacity as counterclaim defendants, subsequently commenced a third-party action against their architect, the foundation contractor, and two other entities who performed work in connection with the design and construction of their new home. The plaintiffs sought full or partial indemnification and contribution from the third-party defendants in the event that the plaintiffs were held liable on the counterclaims. The defendants moved pursuant to CPLR 603 and 1010 to sever the third-party action from the main action.

The Supreme Court providently exercised its discretion in severing the third-party action from the main action, as the main action and the third-party action do not contain common factual and legal issues (*see generally* CPLR 603, 1010; *Emmetsberger v Mitchell*, 7 AD3d 483; *Gardner v City of New York*, 102 AD2d 800).

The plaintiffs' remaining contention regarding the Supreme Court's review of their motion is not properly before this Court.

MASTRO, J.P., DICKERSON, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court