

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

D28934
H/hu

_____AD3d_____

Argued - October 21, 2010

A. GAIL PRUDENTI, P.J.
JOSEPH COVELLO
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2009-08836

DECISION & ORDER

Norman Grafstein, appellant, v Richard Schwartz,
et al., respondents.

(Index No. 22043/08)

Ackerman, Levine, Cullen, Brickman & Limmer, LLP, Great Neck, N.Y. (John M. Brickman, Todd H. Hesekeiel, and Benjamin S. Kaplan of counsel), for appellant.

Richman & Levine, P.C., Garden City, N.Y. (Keith H. Richman and Seth A. Levine of counsel), for respondents Richard Schwartz, Marie Neubert, and North American Enclosures, Inc.

Melito & Adolfsen P.C., New York, N.Y. (Ignatius John Melito and John H. Somoza of counsel), for respondents Howard Schultz, Martin Sage, and Schultz and Sage, CPAs, P.C.

In an action, inter alia, to recover damages for breach of contract, fraud, and for violations of the Federal Racketeer Influenced and Corrupt Organizations Act (18 USC § 1962[c], [d]), the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Bucaria, J.), entered July 30, 2009, as granted those branches of the separate motions of the defendants Richard Schwartz, Marie Neubert, and North American Enclosures, Inc., and the defendants Howard Schultz, Martin Sage, and Schultz & Sage, CPAs, P.C., which were to dismiss the eighth and ninth causes of action alleging violations of the Federal Racketeer Influenced and Corrupt Organizations Act (18 USC § 1962[c], [d]) pursuant to CPLR 3211(a)(7).

November 9, 2010

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ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

The Supreme Court properly granted those branches of the defendants' respective motions which were to dismiss the eighth cause of action alleging a violation of the Federal Racketeer Influenced and Corrupt Organizations Act (hereinafter RICO) pursuant to 18 USC § 1962(c), because the factual allegations in support thereof were not pleaded with the requisite particularity (*see Joyce v JJF Assoc., LLC*, 8 AD3d 190; *CFJ Assocs. of N.Y. v Hanson Indus.*, 274 AD2d 892, 896; *United Knitwear Co. v North Sea Ins. Co.*, 203 AD2d 358; *Ritchie v Carvel Corp.*, 180 AD2d 786). As the ninth cause of action based upon 18 USC § 1962(d), alleging a conspiracy, is dependent upon the eighth cause of action alleging a substantive RICO violation, dismissal of the eighth cause of action necessitated the dismissal of the ninth cause of action (*see Greenstone/Fontana Corp. v Feldstein*, 72 AD3d 890; *Besicorp, Ltd. v Kahn*, 290 AD2d 147).

The plaintiff's remaining contentions are unpreserved for appellate review.

PRUDENTI, P.J., COVELLO, FLORIO and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court