

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

D29276
G/prt

_____AD3d_____

Argued - October 29, 2010

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2009-09876

DECISION & ORDER

Anthony Alizio, etc., plaintiff, v Peter Robert
Perpignano, et al., defendants.
(Nassau County Index No. 19181/03)
(Action No. 1)

P.J. Alizio Realty, Inc., plaintiff, v Lillian Eisenberg,
etc., et al., defendants (and a third-party action).
(Nassau County Index No. 312/04)
(Action No. 2)

Irving Eisenberg, etc., plaintiff, v
P.J. Alizio, Inc., et al., defendants.
(Nassau County Index No. 16478/03)
(Action No. 3)

Anthony Alizio, etc., plaintiff, v
Gregory Ronan, et al., defendants.
(Suffolk County Index No. 17792/03)
(Action No. 4)

Irving Eisenberg, etc., plaintiff, v
P.J. Alizio, Inc., et al., defendants.
(Queens County Index No. 21860/03)
(Action No. 5)

November 30, 2010

Page 1.

ALIZIO v PERPIGNANO
P.J. ALIZIO REALTY, INC. v EISENBERG
EISENBERG v P.J. ALIZIO, INC.
ALIZIO v RONAN
EISENBERG v P.J. ALIZIO, INC.
OCEANVIEW REALTY, LLC v ALIZIO

Oceanview Realty, LLC, et al., appellants, v Anthony Alizio, et al., respondents, et al., defendants.
(Queens County Index No. 11818/09)
(Action No. 6)

Goldberg & Cohn, LLP, Brooklyn, N.Y. (Elliott S. Martin of counsel), for appellants.

Bracken & Margolin, LLP, Islandia, N.Y. (Jeffrey D. Powell and Kristen L. Ryan of counsel), for respondent Anthony Alizio.

Sahn Ward & Baker, PLLC, Uniondale, N.Y. (Ralph Branciforte and Jon A. Ward of counsel), for respondent Joseph Alizio.

Gallet Dreyer & Berkey, LLP, New York, N.Y. (David T. Azrin and Jerry A. Weiss of counsel), for respondent Lillian Eisenberg, as administrator of the estate of Irving Eisenberg.

Herrick, Feinstein LLP, New York, N.Y. (Scott E. Mollen and Darlene Fairman of counsel), defendant pro se.

In related actions, inter alia, to recover damages for fraud and breach of contract (Action No. 6), the plaintiffs appeal from an order of the Supreme Court, Nassau County (Bucaria, J.), entered October 1, 2009, which granted those branches of the motion of the defendant Anthony Alizio, joined by the defendants Joseph Alizio and Lillian Eisenberg, as administrator of the estate of Irving Eisenberg, which were pursuant to CPLR 602(a) to transfer the venue of this action from Queens County to Nassau County and thereupon to join for trial this action with an action entitled *Alizio v Perpignano* (Action No. 1), pending in the Supreme Court, Nassau County, under Index No. 19181/03, and four related actions (Action Nos. 2, 3, 4, and 5) also pending in the Supreme Court, Nassau County, all of which had previously been joined for trial.

ORDERED that the order is affirmed, with one bill of costs payable by the appellants to the respondents.

Initially, we note that the defendant Anthony Alizio (hereinafter the defendant) moved in Action No. 6, inter alia, for an order “consolidating and/or joining” the instant action with certain actions pending in the Supreme Court, Nassau County, which had previously been joined for trial, and the Supreme Court granted the branch of the motion which was for a joint trial, rather than the alternative branch which was for consolidation. In the order appealed from, the Supreme Court left each of the actions intact and did not completely consolidate them into a single action under a single caption (*see generally Mascioni v Consolidated R. R. Corp.*, 94 AD2d 738, 739; *Brian Wallach Agency v Bank of N.Y.*, 75 AD2d 878, 879; *Padilla v Greyhound Lines*, 29 AD2d 495, 497; *see also* Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C602:2).

November 30, 2010

Page 2.

ALIZIO v PERPIGNANO
P.J. ALIZIO REALTY, INC. v EISENBERG
EISENBERG v P.J. ALIZIO, INC.
ALIZIO v RONAN
EISENBERG v P.J. ALIZIO, INC.
OCEANVIEW REALTY, LLC v ALIZIO

“[A] motion seeking a joint trial pursuant to CPLR 602(a) rests within the sound discretion of the trial court” (*Glussi v Fortune Brands*, 276 AD2d 586, 587; *see J & A Vending v Eagle & Fein*, 268 AD2d 505, 506). When there are common questions of law or fact, a joint trial is warranted unless the opposing party demonstrates prejudice to a substantial right (*see Pierre-Louis v DeLonghi Am., Inc.*, 66 AD3d 855, 856; *Glussi v Fortune Brands*, 276 AD2d at 587; *Ryckman v Schlessinger-Levi-Polatsch-Tydings*, 225 AD2d 603).

Here, the Supreme Court did not improvidently exercise its discretion in granting that branch of Anthony Alizio’s motion which was for a joint trial because the several actions involve common questions of law and fact. Therefore, the interests of justice and judicial economy would be served by a joint trial (*see Glussi v Fortune Brands*, 276 AD2d at 587; *J & A Vending v Eagle & Fein*, 268 AD2d at 506). Furthermore, the plaintiffs’ unsubstantiated claim that a joint trial would be “unwieldy” was not sufficient to satisfy the burden of demonstrating prejudice to a substantial right (*see Whiteman v Parsons Transp. Group of N.Y., Inc.*, 72 AD3d 677, 678; *Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606).

The plaintiffs’ remaining contention is without merit.

COVELLO, J.P., DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court