

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

D30956
O/kmb

_____AD3d_____

Argued - March 22, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2010-01243
2010-08032

DECISION & ORDER

Blue Ridge Farms, Inc., et al., plaintiffs-respondents,
v Thomas Kontogiannis, et al., defendants, Annette
Apergis, et al., appellants, June Siegel, etc., defendant-
respondent.

(Index No. 23246/08)

DePetris & Bachrach, LLP, New York, N.Y. (Ronald E. DePetris of counsel), for
appellants.

Massoud & Pashkoff, LLP, New York, N.Y. (Ahmed A. Massoud of counsel), for
plaintiffs-respondents.

Maizes & Maizes, LLP, Bronx, N.Y. (Michael H. Maizes of counsel), for defendant-
respondent.

In an action, inter alia, to recover damages for breach of fiduciary duty and unjust enrichment, (1) the defendants Annette Apergis, Chloe Kontogiannis, Georgia Kontogiannis, Lisa DiPinto, Andrew Themis, Chloe Foods S.A., Anperg Inc., 3301 Atlantic Avenue LLC, BRF Acquisition LLC, Cross Island Plaza Inc., Edgewater Development Inc., Parkview Financial Center Inc., Parkview Center Inc., and Plaza Real Estate Holdings Inc. appeal, as limited by their notice of appeal and brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated November 10, 2009, as denied those branches of their motion which were pursuant to CPLR 3211(a)(1), (3), (5), (7), and (10) to dismiss the second, third, fourth, sixth, seventh, eighth, nineteenth, and twentieth causes of action insofar as asserted against them or, in the alternative, to stay all proceedings relating to those causes of action insofar as asserted against them, and (2) the defendants Annette Apergis, Chloe Kontogiannis, Georgia Kontogiannis, Lisa DiPinto, Andrew

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Themis, Chloe Foods S.A., Anperg Inc., 3301 Atlantic Avenue LLC, BRF Acquisition LLC, Cross Island Plaza Inc., and Edgewater Development Inc., separately appeal, as limited by their notice of appeal and brief, from so much of an order of the same court dated June 30, 2010, as denied those branches of their motion which were pursuant to CPLR 3211(a), (1), (3), (5), (7), and (10) to dismiss the cross claims of the defendant June Siegel insofar as asserted against them or, in the alternative, to stay all proceedings relating to the cross claims insofar as asserted against them, and denied that branch of their motion which was for leave to renew those branches of their prior motion which were pursuant to CPLR 3211(a)(1), (3), (5), (7), and (10) to dismiss the second, third, fourth, sixth, seventh, and eighth causes of action insofar as asserted against them.

ORDERED that the orders are affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

The Supreme Court properly denied those branches of the motion of the appellants Annette Apergis, Chloe Kontogiannis, Georgia Kontogiannis, Lisa DiPinto, Andrew Themis, Chloe Foods S.A., Anperg Inc., 3301 Atlantic Avenue LLC, BRF Acquisition LLC, Cross Island Plaza Inc., Edgewater Development Inc., Parkview Financial Center Inc., Parkview Center Inc., and Plaza Real Estate Holdings Inc. which were pursuant to CPLR 3211(a)(1), (5), (7), and (10) to dismiss the sixth, seventh, eighth, nineteenth, and twentieth causes of action insofar as asserted against them (*see Chung v Wang*, 79 AD3d 693, 694; *Plumitallo v Hudson Atl. Land Co., LLC*, 74 AD3d 1038, 1039; *Matter of Bolin v Nassau County Bd. of Coop. Educ. Servs.*, 52 AD3d 704, 707; *cf. Yenrab, Inc. v 794 Linden Realty, LLC*, 68 AD3d 755, 758). Additionally, the Supreme Court properly denied, at this juncture, those branches of the motion which were to dismiss the second, third, and fourth causes of action (*see CPLR 3211[a][3]*).

Furthermore, the Supreme Court properly denied those branches of the motion of the appellants Annette Apergis, Chloe Kontogiannis, Georgia Kontogiannis, Lisa DiPinto, Andrew Themis, Chloe Foods S.A., Anperg Inc., 3301 Atlantic Avenue LLC, BRF Acquisition LLC, Cross Island Plaza Inc., and Edgewater Development Inc. which were to dismiss the cross claims of the defendant June Siegel insofar as asserted against them (*see Mahler v Campagna*, 60 AD3d 1009, 1011-1012; *Eveready Ins. Co. v Asante*, 153 AD2d 874).

The Supreme Court did not improvidently exercise its discretion in denying the appellants' alternative requests to stay all proceedings relating to the subject causes of action and cross claims insofar as asserted against them (*see CPLR 2201; Fleet Natl. Bank v Marrazzo*, 23 AD3d 337, 338).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court