

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

D35493
Y/kmb

_____AD3d_____

Submitted - April 3, 2012

DANIEL D. ANGIOLILLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-05451

DECISION & ORDER

Joseph Alizio, et al., appellants, v Richard B. Feldman,
et al., respondents.

(Index No. 3732/07)

Jeffrey Levitt, Massapequa, N.Y., for appellants.

Abrams, Gorlick, Friedman & Jacobson, P.C., New York, N.Y. (Barry Jacobs and
Shari Skolnick of counsel), for respondents.

In an action, inter alia, to recover damages for legal malpractice, the plaintiffs appeal from an order of the Supreme Court, Nassau County (Bucaria, J.), entered April 4, 2011, which denied their motion pursuant to CPLR 602(a) to join this action for trial with an action entitled *Alizio v Perpignano*, pending in the Supreme Court, Nassau County, under Index No. 19181/03, and five related actions also pending in the Supreme Court, Nassau County, which had previously been joined for trial (*see Alizio v Perpignano*, 78 AD3d 1087).

ORDERED that the order is reversed, on the law, with costs, and the plaintiffs' motion to join this action for trial with an action entitled *Alizio v Perpignano*, and five related actions is granted.

The plaintiffs commenced this action, inter alia, to recover damages for legal malpractice, alleging, among other things, that the defendants were negligent in representing the plaintiffs in connection with the preparation and execution of a partnership settlement agreement and management agreement. In an order entered April 4, 2011, the Supreme Court denied the plaintiffs' motion pursuant to CPLR 602(a) to join this action for trial with an action entitled *Alizio v Perpignano*, pending in the Supreme Court, Nassau County, under Index No. 19181/03, and several related actions involving, among other things, the sale of the partnerships' assets, on the ground that

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joinder would lead to confusion and unwieldiness, and might delay the malpractice case (*see Alizio v Perpignano*, 78 AD3d 1087). The plaintiffs appeal, and we reverse.

Where, as here, common questions of law or fact exist, a motion pursuant to CPLR 602(a) for a joint trial should be granted absent a showing of prejudice to a substantial right of the party opposing the motion (*id.* at 1088; *see Mas-Edwards v Ultimate Servs., Inc.*, 45 AD3d 540, 540; *Perini Corp. v WDF, Inc.*, 33 AD3d 605, 606). Here, the defendants failed to show prejudice to a substantial right if this action is joined with others for trial (*see Moor v Moor*, 39 AD3d 507, 507-508). Moreover, mere delay is not a sufficient basis to justify the denial of a joint trial (*see Perini Corp. v WDF, Inc.*, 33 AD3d at 606; *Alsol Enters., Ltd. v Premier Lincoln-Mercury, Inc.*, 11 AD3d 494, 496).

Accordingly, the Supreme Court should have granted the plaintiffs' motion to join this action for trial with the action entitled *Alizio v Perpignano*, pending in the Supreme Court, Nassau County, and several related actions previously joined for trial.

ANGIOLILLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court