

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1204

CA 08-01749

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, GREEN, AND GORSKI, JJ.

LYNN JUDA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY SOLAZZO, DEFENDANT,
AND ANDREW DONOVAN, DEFENDANT-APPELLANT.
(ACTION NO. 1.)

DAILY POST, LLC, PLAINTIFF,

V

LYNN JUDA, ET AL., DEFENDANTS.
(ACTION NO. 2.)
(APPEAL NO. 1.)

DAMON MOREY LLP, BUFFALO (JAMES W. GORMLEY OF COUNSEL), FOR
DEFENDANT-APPELLANT.

MOSEY PERSICO, LLP, BUFFALO (JENNIFER C. PERSICO OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Patrick H. NeMoyer, J.), entered July 17, 2008 in actions for, inter alia, breach of fiduciary duty. The order, inter alia, denied that part of the cross motion of defendant Andrew Donovan to dismiss the complaint against him.

It is hereby ORDERED that said appeal from the order insofar as it concerned action No. 2 is unanimously dismissed and the order is otherwise affirmed without costs.

Memorandum: The defendant-appellant (defendant) in appeal Nos. 1 and 2 contends in appeal No. 1 that Supreme Court erred in granting the motion of the plaintiff in appeal Nos. 1 and 2 insofar as she sought relief in action No. 2. Defendant is not a party to that action and is not aggrieved by that part of the order (see CPLR 5511; *Michael Reilly Design, Inc. v Houraney*, 40 AD3d 592, 593). His appeal from that part of the order is therefore dismissed (see *Michael Reilly Design, Inc.*, 40 AD3d at 593; *Broadway Equities v Metropolitan Elec. Mfg. Co.*, 306 AD2d 426, 427).

With respect to appeal No. 2 and the remainder of appeal No. 1, we affirm for reasons stated in the decisions at Supreme Court.

Entered: October 9, 2009

Patricia L. Morgan
Clerk of the Court