

CITATION: L-Jalco Holdings Inc. v. Marino, 2011 ONCA 639
DATE: 20111012
DOCKET: C53387

COURT OF APPEAL FOR ONTARIO

Doherty, Weiler and Simmons JJ.A.

BETWEEN

L-Jalco Holdings Inc.

Plaintiff (Appellant)

and

Gregory Joseph Marino and Joseph Marino

Defendants (Respondents)

Glenn E. Cohen, for the appellant

Gregory Sidlofsky, for the respondents

Heard: October 11, 2011

On appeal from the order of Justice Paul Perell of the Superior Court of Justice, dated January 31, 2011.

APPEAL BOOK ENDORSEMENT

[1] The real issue in this appeal is whether the respondents were privies to the decision against the elder Marinos and therefore entitled to rely on the judgment refusing to reopen the foreclosure.

[2] The appellant concedes that the respondents were necessary parties to the prior foreclosure proceeding against the elder Marinos but says that they are not privies because they are independent debtors. He says that they do not have a community of interest with the elder Marinos because the issues decided against them were not fundamental to the respondents' liability.

[3] We disagree. Perell J. analyzed the question of privity at paras. 56-63 of his reasons. We are in substantial agreement with his analysis of the particular circumstances of this case. In our opinion he correctly determined the issue of privity and therefore correctly held that issue estoppel applied against L-Jalco.

[4] Accordingly, the appeal is dismissed. The respondents are entitled to the costs of the appeal fixed in the amount of \$10,000 inclusive of all applicable taxes and disbursements.