

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

34

CA 13-00360

PRESENT: PERADOTTO, J.P., LINDLEY, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF THE ARBITRATION BETWEEN
NICHOLAS GIANGUALANO, MARY ANN ALLAN,
RICHARD S. ALLAN, GARY L. ALLAN, KENNETH N.
ALLAN, JEFFREY R. ALLAN AND ELIZABETH E.
CHAIRES, PETITIONERS-RESPONDENTS,

AND

MEMORANDUM AND ORDER

JAY B. BIRNBAUM AND ILENE L. FLAUM, AS
CO-TRUSTEES OF TRUST "B" UNDER THE LAST WILL
AND TESTAMENT OF BERNARD B. BIRNBAUM, DECEASED,
RESPONDENTS-APPELLANTS.
(ACTION NO. 1.)

IN THE MATTER OF THE APPLICATION OF JAY B.
BIRNBAUM AND ILENE L. FLAUM, AS CO-TRUSTEES OF
TRUST "B" UNDER THE LAST WILL AND TESTAMENT OF
BERNARD B. BIRNBAUM, DECEASED,
PETITIONERS-APPELLANTS,

V

NICHOLAS GIANGUALANO, MARY ANN ALLAN, RICHARD S.
ALLAN, GARY L. ALLAN, KENNETH N. ALLAN, JEFFREY R.
ALLAN AND ELIZABETH E. CHAIRES,
RESPONDENTS-RESPONDENTS.
(ACTION NO. 2.)
(APPEAL NO. 2.)

LIPPES MATHIAS WEXLER FRIEDMAN LLP, BUFFALO (DENNIS C. VACCO OF
COUNSEL), AND BOND, SCHOENECK & KING, PLLC, ROCHESTER, FOR
RESPONDENTS-APPELLANTS AND PETITIONERS-APPELLANTS.

AUGELLO & MATTELIANO, LLP, BUFFALO (JOSEPH A. MATTELIANO OF COUNSEL),
ATTEA & ATTEA, NORTH BOSTON, AND FREID AND KLAWON, WILLIAMSVILLE, FOR
PETITIONERS-RESPONDENTS AND RESPONDENTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (John A.
Michalek, J.), entered February 6, 2013. The order denied the motion
of respondents-petitioners for leave to reargue and renew their cross
motion to consolidate certain proceedings in Surrogate's Court, Monroe
County.

It is hereby ORDERED that said appeal from the order insofar as

it denied leave to reargue is unanimously dismissed, and the order is affirmed without costs.

Same Memorandum as in *Matter of Gianguialano v Birnbaum* ([appeal No. 1] ___ AD3d ___ [Feb. 14, 2014]).

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court