

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU  
PRESENT: HON. ANTHONY L. PARGA, J.S.C.

SALVATORE LOMBARDO, MICHELE  
LOMBARDO and LAWRENCE NOSTRAMO,

Plaintiffs,

Sequence #006, 007, 008, 009, 010, 011,  
012, 013, 014, 015

Motion Date: 9/11/02

Index # 16765/97

Part 22

- against -

THE AMERICAN TOBACCO COMPANY,  
AMERICAN BRANDS, INC., LORILLARD  
INC., LORILLARD TOBACCO COMPANY,  
PHILIP MORRIS INCORPORATED, PHILIP  
MORRIS COMPANIES, INC., RJR NABISCO  
INC., R.J. REYNOLDS TOBACCO COMPANY,  
LIGGETT GROUP, INC., now known as  
BROOKE GROUP, LTD., LIGGETT & MYERS  
TOBACCO COMPANY, BROWN &  
WILLIAMSON INDUSTRIES, INC., BROWN &  
WILLIAMSON TOBACCO CORPORATION,  
THE TOBACCO INSTITUTE, INC. and THE  
COUNCIL FOR TOBACCO RESEARCH-USA,  
INC.,

Defendants.

Notices of Motion.....	1-9
Notice of Cross-Motion .....	10
Affirmation in Support .....	11-12
Memoranda of Law .....	13-21
Letters dated 3/15/02, 5/1/01, 11/19/01.....	22-24
Stipulations dated 2/13/02, 11/12/01 and 10/1/01.....	25-27

Upon the foregoing papers, the motion (sequence #006) by defendant R. J. Reynolds Tobacco Company for an order granting summary judgment dismissing the claims of plaintiff Nostramo; the motion (sequence #007) by defendants R. J. Reynolds Tobacco Company and Lorillard Tobacco Company for an order granting summary judgment dismissing the claims of plaintiffs Salvatore and Michele Lombardo; the motion (sequence

#008) by defendants Phillip Morris, Inc., R. J. Reynolds Tobacco Company and Brown & Williamson Tobacco Corp., individually and as successor by merger to the American Tobacco Company, for an order granting summary judgment dismissing plaintiffs' complaint; the motion (sequence #009) by defendant Brown & Williamson Tobacco Corporation for an order dismissing the claims of plaintiff Nostramo; the motion (sequence #010) by defendants Lorillard Tobacco Company, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, the Council for Tobacco Research - U.S. A., Inc. and The Tobacco Institute, Inc., for an order granting summary judgment dismissing plaintiffs' complaint; the motion (sequence #011) by defendant Lorillard Tobacco Company for an order granting summary judgment dismissing plaintiffs' complaint; the motion (sequence #012) by defendants Phillip Morris Incorporated, R. J. Reynolds Tobacco Company, Lorillard Tobacco Company and Brown & Williamson Tobacco Corporation, individually and as successor by merger to the American Tobacco Company, for an order granting summary judgment dismissing plaintiffs' complaint; the motion (sequence #013) by defendant The Council for Tobacco Research - USA, Inc. , for an order granting summary judgment dismissing plaintiffs' complaint; the motion by defendant The Tobacco Institute, Inc. (sequence #014) for an order granting summary judgment dismissing the complaint; the motion (sequence #015) by defendant Liggett Group, Inc. , now known as Brooke Group, Inc. for an order granting summary judgment dismissing the plaintiffs' complaint; are consolidated for disposition and decided as follows:

The motions and the branches of the motions that seek the dismissal of plaintiff Nostramo's claims pursuant to CPLR 3212 (sequence numbers 006, 008, 009, 010, 011, 012, 013, 014 and 015) are marked off the motion calendar and shall be restored on a specific date upon ten days' notice to the legal representatives of plaintiff Nostramo's estate (see, *Matter of Einstoss*, 26 NY2d 181, 190). Plaintiff Nostramo's death on September 1, 2001, automatically stayed the action as to him pending the substitution of a legal representative,

and consequently the Court does not have jurisdiction to hear and determine the enumerated motions until the appointment and substitution of that legal representative (see, CPLR 1015; *Matter of Einstoss*, supra; *Gonzalez v. Ford Motor Co.*, \_\_ AD2d \_\_, 74 NYS2d 468,470 [2<sup>nd</sup> Dept. 2002]; *Williams v. Way*, 289 AD2d 483, 484; *Meehan v. Washington*, 242 AD2d 286, 287).

The defendants are directed to ascertain whether an administrator has been appointed for the decedent's estate. If one has been appointed by the Surrogate's Court, then the defendants shall move in this Court to have that person substituted for plaintiff Nostramo (see, CPLR 1021; *Bova v. Vinciguerra*, 139 AD2d 797, 799). If no administrator has been designated by the Surrogate Court, then the defendants shall, within 45 days of this order, move in Surrogate's Court for the appointment of a private, or if no one is eligible, a public administrator (see, *Horvath v. Hong Lin Yap*, 291 AD2d 252, 252; *Petty v. Meadowbrook Dist. Corp.*, 266 AD2d 88; *Starkey v. Starkey*, 192 AD2d 844, 846; *Bova v. Vinciguerra*, supra; CPLR 1021; compare, *Akivis v. Drucker*, 80 NY2d 786, 787; *Cullen v. Olins Leasing, Inc.*, 61 NY2d 867; *Gonzalez v. Ford Motor Co.*, supra; *Kelly v. Methodist Hosp.*, 276 AD2d 672, 673; *Macomber v. Cipollin*, 226 AD2d 435, 437; *Weber v. Gellinger*, 124 AD2d 1009; *Topal v. BFG Corp.*, 108 AD2d 849, 851).

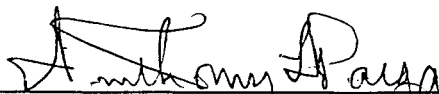
However, as to plaintiffs Salvatore and Michele Lombardo, the motion and branches of the motions which seek the dismissal of the Lombardos' claims pursuant to CPLR 3212 (sequence numbers 007, 008, 009, 010, 011, 012, 013, 014 and 015) are granted without opposition since the action is not stayed against these plaintiffs (see, *Itamari v. Dime Savings Bank of New York, Inc.*, \_\_ AD2d \_\_, 744 NYS2d 503, 504 [2<sup>nd</sup> Dept. 2002]; *Bova v. Vinciguerra*, supra).

Dated: 9/30/02

**ENTERED**

OCT 02 2002

NASSAU  
COUNTY CLERK

  
Anthony L. Parga, J.S.C.