

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT**

PEOPLE OF THE STATE OF NEW YORK, by LETITIA
JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

v.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC TRUMP,
ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE
DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., THE TRUMP ORGANIZATION LLC,
DJT HOLDINGS LLC, DJT HOLDINGS MANAGING
MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH
WABASH VENTURE LLC, TRUMP OLD POST OFFICE
LLC, 40 WALL STREET LLC, and SEVEN SPRINGS LLC,

Defendants-Appellants,

CLIFFORD S. ROBERT, ESQ. (Robert & Robert PLLC),
MICHAEL FARINA, ESQ. (Robert & Robert PLCC),
CHRISTOPHER M. KISE, ESQ. (Continental PLLC),
MICHAEL MADAIO, ESQ. (Habba Madaio & Associates,
LLP), and ARMEN MORIAN, ESQ. (Morian Law PLLC),

Non-Party Appellants.

No. 2023-04925

Supreme Court
New York County
Index No. 452564/2022

**AFFIRMATION IN
RESPONSE TO MOTION
TO SEVER APPEALS**

DENNIS FAN, an attorney admitted to practice law in the State of New York,
who is not a party to this action, under penalty of perjury affirms as follows:

1. I am a Senior Assistant Solicitor General in the Office of Letitia James,
Attorney General of the State of New York (OAG), counsel for the plaintiff in this
Executive Law § 63(12) enforcement action against defendants—entities operating as
the Trump Organization and certain executives of the Trump Organization. I submit
this affirmation in response to the motion to sever filed by non-party appellants, who

are movants in this Court and defendants' counsel in the underlying action. The motion seeks to sever movants' appeals from an order imposing sanctions against counsel from defendants' appeal from the grant of partial summary judgment to OAG and denial of partial summary judgment to defendants issued in the same order. I am familiar with the facts and circumstances of this matter based upon my review of the relevant orders and decisions rendered and submissions filed by the parties, and through communications with OAG attorneys.

2. This Court should grant in part and deny in part the motion to sever. OAG's motion for sanctions and the parties' cross-motions for summary judgment were resolved in the same decision by Supreme Court, New York County (Engoron, J.). *See* Decision & Order (Sept. 26, 2023), reproduced at Affirm. of Brian J. Isaac and Michael S. Ross (Jan. 23, 2024), Ex. E, NYSCEF No. 21 ("Isaac Affirm"). The motions were made in three different sequences (Nos. 26, 27, and 28) and separate notices of appeal have been filed by movants and docketed (*see* Notices of Appeal (Oct. 23, 2023), Isaac Affirm., Ex. E). OAG agrees that this Court may permit movants to file a separate brief on the sanctions ruling based solely on the record applicable to that motion and has no opposition to movants receiving separate oral argument time with respect to that appeal.

3. However, OAG opposes any request to hear movant's appeals separately from the underlying merits appeal.¹ Supreme Court's determination to order sanctions


¹ The trial concluded on January 11, 2024, and a final judgment is expected imminently. Any appeal from judgment will subsume defendants' pending appeal from the summary-judgment rulings. *See Matter of Aho*, 39 N.Y.2d 241, 248 (1976).

was based on its finding that the arguments made by movants in their summary-judgment motion were frivolous. *See* Decision & Order at 4–11 (Sept. 26, 2023). Therefore, the merits appeal and the sanctions appeals all require the Court to understand and evaluate the summary-judgment record. Judicial economy and efficiency are best served if a single panel can consider common issues of fact and law at the same time. Accordingly, this Court should consolidate movants’ appeals with defendants’ appeal for purposes of argument. *See* Mark Davies et al., *Civil Appellate Practice* § 8:2 (*New York Practice Series vol. 8*, 3d ed. May 2023 update) (Westlaw) (noting that consolidation may entail “related appeals being heard on the same day calendar upon a separate record and briefs” rather than “consolidation of appeals upon a joint record”).

4. Movants miss the mark in arguing (Mot. at 7) that the appeals should be heard separately because “the Court may be more disposed to render a decision adverse to Counsel if the summary judgment rulings are not reversed.” Movants have no cognizable interest in preventing the Court from gaining a fuller understanding of the substance of their arguments in this action, however. And insofar as movants desire “[e]arly resolution of the sanctions ruling” (Mot. at 7), they have made no effort to perfect their appeals even though the sanctions ruling was issued over four months ago. At this juncture, consolidation for purposes of argument remains the most efficient outcome.

WHEREFORE, this Court should grant in part and deny in part the motion to sever.

Dated: New York, New York
February 13, 2024

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