

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21813
X/kmg

_____AD3d_____

Submitted - December 1, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2007-04203

DECISION & ORDER

State of New York, plaintiff,
v LVF Realty Co., Inc., appellant,
Sunoco, Inc. (R&M), respondent,
et al., defendant.

(Index No. 12328/02)

Robert G. Del Gadio, East Meadow, N.Y. (Bleakley Platt & Schmidt, LLP, White Plains, N.Y. [Matthew Parisi], of counsel), for appellant.

Beveridge & Diamond, P.C., New York, N.Y. (Robert Brager, Christopher J. McKenzie, Megan R. Brillault, Harold L. Segall, Joseph B. Freudenberg, and S. David Devaprasad of counsel), for respondent.

In an action, inter alia, to recover damages resulting from the discharge of petroleum pursuant to article 12 of the Navigation Law, the defendant LVF Realty Co., Inc., appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (LaMarca, J.), dated March 27, 2007, as denied that branch of its motion which was for an award of an attorney's fee against the defendant Sunoco, Inc. (R&M).

ORDERED that the appeal is dismissed, without costs or disbursements.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the cross appeal from the judgment (*see CPLR 5501[a][1]*; *State of New York v LVF*

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STATE OF NEW YORK v LVF REALTY CO., INC.

Realty Co., Inc., _____AD3d_____ [Appellate Division Docket Nos. 2007-07140, 2008-02153, decided herewith]).

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

2007-04203

DECISION & ORDER ON MOTION

State of New York, plaintiff,
v LVF Realty Co., Inc., appellant,
Sunoco, Inc. (R&M), respondent,
et al., defendant.

(Index No. 12328/02)

Motion by the respondent, inter alia, to dismiss an appeal from an order of the Supreme Court, Nassau County, dated March 27, 2007, on the ground that the order has been superseded by a judgment of the same court entered June 22, 2007. By decision and order on motion of this Court dated October 3, 2007, that branch of the motion which was to dismiss the appeal was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeal, it is,

ORDERED that the branch of the motion which was to dismiss the appeal is denied as academic in light of the disposition of the appeal (*see State of New York v LVF Realty Co., Inc.*, _____AD3d_____ [Appellate Division Docket No. 2007-04203, decided herewith]).

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court