

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

D23455  
G/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - April 15, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
HOWARD MILLER  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS, JJ.

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2008-05125

DECISION & ORDER

Aszad Bacchus, et al., appellants, v City of New York,  
et al., respondents, et al., defendants.

(Index No. 19060/05)

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Baron & Pagliughi, PLLC, Cold Spring Harbor, N.Y. (Peter D. Baron and Julie T. Mark of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Deborah A. Brenner of counsel; John Koerner on the brief), for respondents.

In an action, inter alia, to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Kerrigan, J.), dated April 21, 2008, as granted that branch of the cross motion of the defendants City of New York, City of New York Department of Buildings, and New York City Fire Department, which was for summary judgment dismissing the complaint insofar as asserted against them upon the plaintiffs' default in opposing the motion.

ORDERED that the appeal is dismissed, with costs.

Inasmuch as a party may not appeal from any order or judgment entered upon the default of the appealing party (*see* CPLR 5511; *Brown v New York City Hous. Auth.*, 48 AD3d 388; *Matter of Kondratyeva v Yapi*, 13 AD3d 376), and the issue sought to be raised by the plaintiffs was not a matter which was "the subject of contest before the Supreme Court" (*Atwater v Mace*, 39

June 9, 2009

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AD3d 573, 574; *see Matter of Constance P. v Avraam G.*, 27 AD3d 754, 755; *see also James v Powell*, 19 NY2d 249, 256; *Tun v Aw*, 10 AD3d 651, 652; *Brown v Data Communications*, 236 AD2d 499), the appeal must be dismissed.

MASTRO, J.P., FISHER, MILLER, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court