

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-4101  
Ind. No. 2912/07

Cornell Miller,  
Defendant-Appellant.

-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, rendered on or about October 24, 2007,

Now, upon reading and filing the stipulation of the parties hereto, dated August 19, 2008, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzairelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
In the Matter of

Fidelinia A. and  
Virginia A.,

Dependent Children Under 18 Years of  
Age Alleged to be Abused and/or  
Neglected Pursuant to Article 10 of  
the Family Court Act.

M-4134  
Docket Nos. NA5978/05  
NA5979/05

-----  
New York City Administration for  
Children's Services,  
Petitioner-Appellant,

Carlos A.,  
Respondent-Respondent.

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Pierre Janvier, Esq.,  
Law Guardian for the Child,  
Fidelinia A.,

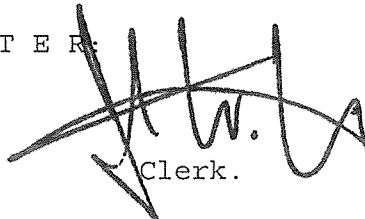
Steven N. Feinman, Esq.,  
Law Guardian for the Child,  
Virginia A.

-----X  
An appeal having been taken to this Court by petitioner-appellant Agency from the order of the Family Court, Bronx County, entered on or about February 2, 2007,

Now, upon reading and filing the stipulation of the parties hereto, filed August 25, 2008, and due deliberation having been had thereon, it is

Ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

E N T E R:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
Mastec North America, Inc.,  
Plaintiff-Appellant,

-against-

M-4137X  
Index No. 601687/05

Consolidated Edison, Inc.,  
Consolidated Edison Company of New  
York, Inc., Con Edison Communications,  
Inc., and Con Edison Communications,  
LLC,  
Defendants-Respondents.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about February 22, 2008 (mot. seq. no. 004),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" August 26, 2008, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-4305  
Ind. No. 5706/06

Kenneth Wilder,  
Defendant-Appellant.

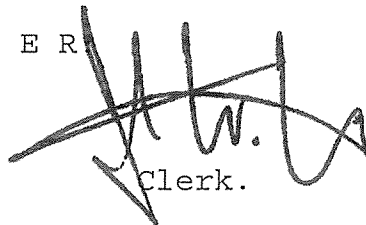
-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about August 31, 2007,

Now, upon reading and filing the stipulation between the parties filed on September 4, 2008, and due deliberation having been had thereon, it is

Ordered that the appeal is deemed withdrawn in conformance with the aforesaid stipulation.

E N T E R



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
In the Matter of the Application of

UBS Painewebber, Inc., now known as  
UBS Financial Services Inc.,  
Petitioner-Appellant,

Pursuant to Article 75 of the CPLR  
to vacate the arbitration award  
dated December 15, 2005 and issued  
by the National Association of  
Securities Dealers in favor of

M-4104  
Index No. 600156/06

Benistar Property Exchange Trust  
Company, Inc.,  
Respondent-Respondent.

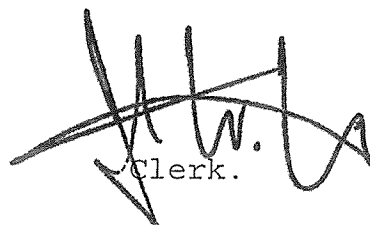
-----X

An appeal having been taken from a judgment of the Supreme Court, New York County, entered on or about April 18, 2007,

Now, upon reading and filing the stipulation of the parties hereto, dated August 19, 2008, and due deliberation having been had thereon,

It is ordered that the appeal previously perfected for the September 2008 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X  
In the Matter of

Elizabeth Martinez,  
Petitioner,

For a Judgment Pursuant to Article 78  
of the CPLR,

M-4281  
Index No. 405153/06

-against-

Tino Hernandez, etc., et al.,  
Respondents.

-----X

An Article 78 proceeding having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about July 10, 2007, to review a determination of respondents,

Now, upon reading and filing the stipulation of the parties hereto, dated September 2, 2008, and due deliberation having been had thereon,

It is ordered that the proceeding, previously perfected for the October 2008 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X

Tremaine C.,

Petitioner-Respondent,

-against-

Nicola M.,

Respondent-Appellant.

-----X

M-4175

Docket Nos. V20764-01/05C

V20764-01/05D

IDV No. 2005 00118

An appeal having been taken from the order of the Supreme Court, Bronx County, Integrated Domestic Violence Court, entered on or about December 4, 2006,

Now, upon reading and filing the stipulation of the parties hereto, filed August 28, 2008, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the October 2008 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Jonathan Lippman, Presiding Justice,  
Peter Tom  
Angela M. Mazzarelli  
Richard T. Andrias  
David B. Saxe, Justices.

-----X

Dennis Avery,

Plaintiff-Appellant,

-against-

M-4258

Index No. 108829/06

Molly Caldwell,

Defendant-Respondent.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about August 6, 2007 (mot. seq. no. 004),

Now, upon reading and filing the stipulation of the parties hereto, filed August 29, 2008, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the October 2008 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk.



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present : Hon. Jonathan Lippman, Presiding Justice,  
Milton L. Williams  
Karla Moskowitz  
Rolando T. Acosta, Justices.

-----X

Sigurd A. Sorenson,  
Plaintiff-Appellant,

-against-

M-3150 & M-3531  
Index No. 601289/05

Bridge Capital Corp., et al.,  
Defendants-Respondents.

-----X

Defendants-respondents having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 10, 2008 [Appeal No. 3887] (M-3150),

And plaintiff-appellant having cross-moved for the same relief (M-3531),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Jonathan Lippman, Presiding Justice,  
Milton L. Williams  
Karla Moskowitz  
Rolando T. Acosta, Justices.

-----X  
John Sanginito, et al.,  
Plaintiffs-Appellants,

-against-

M-3285  
Index No. 23262/06

National Grange Mutual Insurance  
Company,  
Defendant-Respondent.

-----X

Plaintiffs-appellants having moved for reargument of the decision and order of this Court entered on June 10, 2008 (Appeal No. 3888),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and, upon reargument, the decision and order of this Court entered on June 10, 2008 (Appeal No. 3888) is recalled and vacated and a new decision and order substituted therefor. (See Appeal No. 3888, decided simultaneously herewith.)

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. Jonathan Lippman, Presiding Justice,  
Luis A. Gonzalez  
Eugene Nardelli  
Rolando T. Acosta  
Leland G. DeGrasse, Justices.

-----X  
Robert Haynes,  
Plaintiff,

-against-

The Estate of Sol Goldman, et al.,  
Defendants-Respondents,

M-4075  
M-4351  
Index No. 20819/04

Midboro Holding Company,  
Defendant-Respondent,

Newmark & Company Real Estate, Inc.,  
Defendant-Appellant,

Winoker Realty Co.,  
Defendant-Respondent.

-----  
[And a Third-Party action]  
-----

Mohammad Fofana,  
Plaintiff,

-against-

41 West 34<sup>th</sup> Street, LLC, GSL  
Enterprises, Inc. and Winoker Realty  
Co., Inc.,  
Defendants-Respondents,

Index No. 1186/06

-and-

Newmark & Company Real Estate, Inc.,  
Defendant-Appellant,

-and-

Alliance Elevator Company, doing business  
as Unitec Elevator Company,  
Defendant.

-----X

Appeals having been taken to this Court by defendant, Newmark & Company Real Estate, Inc., from the order of the Supreme Court, Bronx County, entered on or about January 18, 2007 (*Haynes* [Index No. 20819/04]) and July 18, 2007 (*Fofana* [Index No. 1186/06]) and an appeal having been taken to this Court by plaintiff *Haynes* from the order of said Court entered on or about August 17, 2007, both appeals taken in *Haynes* having been perfected,


And defendants-respondents Estate of Sol Goldman, et al. having moved this Court for an order striking the reply brief served in the *Haynes* appeal and disqualifying Marcia Raicus, Esq., and the firm of Smith Mazure Director Wilkins Young & Yagerman P.C. from representing defendant-appellant Newmark & Company Real Estate, Inc. in both the *Haynes* and *Fofana* appeals (M-4075),

And defendant-appellant Newmark & Company Real Estate, Inc. having cross-moved for an order striking the respondent's brief filed in both *Haynes* and *Fofana* appeals and disqualifying Klein & Associates from representing defendants-respondents in both appeals (M-4351),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon, it is

Ordered that the motion and cross motion are denied.

E N T E R :



Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. Peter Tom, Justice Presiding,  
Luis A. Gonzalez  
John W. Sweeny, Jr.  
James M. Catterson  
Karla Moskowitz, Justices.

-----X  
Violin Entertainment Acquisition  
Company, Inc.,

Petitioner-Respondent,

-against-

M-3559  
Index No. 601476/08

Virgin Entertainment Holdings, Inc.,

Respondent-Appellant.  
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about June 17, 2008 (mot. seq. no. 001)

And petitioner-respondent having moved for dismissal of the aforesaid appeal for failure to timely perfect,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties dated August 21, 2008, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid stipulation.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Peter Tom, Justice Presiding,  
Luis A. Gonzalez  
John W. Sweeny, Jr.  
James M. Catterson  
Karla Moskowitz, Justices.

-----X

Clarence Jones,

Plaintiff-Appellant,

-against-

M-3399

Index No. 100477/05

414 Equities LLC and Artimus  
Construction Inc.,

Defendants-Respondents.

-----X

(And a third-party action)

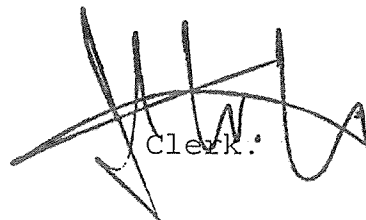
An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 2, 2007 (mot. seq. no. 006),

And plaintiff-appellant having moved for an enlargement of time in which to perfect the aforesaid appeal until after this Court decides plaintiff's appeal taken from the orders of Supreme Court entered on or about November 1, 2006 and December 13, 2006, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied and, sua sponte, the appeal is dismissed.

ENTER:

  
Clerk:

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon: Peter Tom, Justice Presiding,  
Angela M. Mazzarelli  
David Friedman  
Milton L. Williams  
Karla Moskowitz, Justices.

-----X  
John Barbieri,  
Plaintiff-Respondent,

-against-

Anthanasios Vamvouris,  
Defendant-Appellant,

-and-

Arthur Friedman,  
Defendant-Respondent.

M-3866  
M-3987  
Index No. 100105/05

-----X

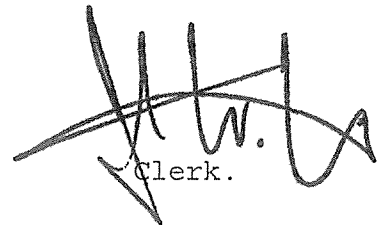
Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 3, 2007 (M-3866),

And plaintiff-respondent having cross-moved for dismissal of the aforesaid appeal (M-3987),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to on or before November 10, 2008 for the January 2009 Term. The cross motion to dismiss the appeal is granted unless appellant perfects the appeal for said January 2009 Term. Upon failure to so perfect, an order dismissing the appeal may be entered ex parte, provided that respondent serves a copy of this order upon appellant within 10 days from the date of entry hereof.

E N T E R :

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,  
Angela M. Mazzarelli  
Milton L. Williams  
James M. Catterson, Justices.

-----X

Peter Marc Stern,  
Plaintiff-Respondent,

-against-

M-2285  
Index No. 111895/05

Andrew Lavcott Bluestone,  
Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on January 31, 2008 (Appeal No. 1926),

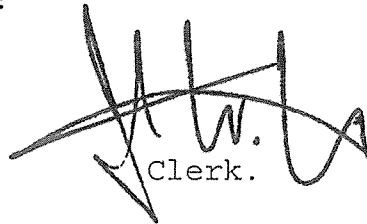
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted, and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Was the order of this Court, which affirmed the order of Supreme Court, properly made?"

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion.

E N T E R:

  
Clerk.



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Peter Tom, Justice Presiding,  
David Friedman  
John T. Buckley  
Rolando T. Acosta  
Helen E. Freedman, Justices.

-----X

Maria S. Burgos,

Plaintiffs-Respondents,

-against-

M-4108

Index No. 15760/06

205 E.D. Food Corporation, doing  
business as C-Town, et al.,

Defendants-Appellants.

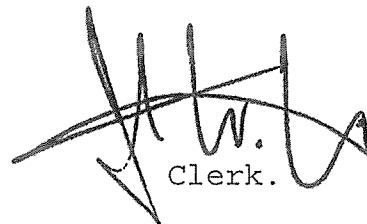
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Defendants-appellants having moved for an order staying the trial in the above-entitled action pending hearing and determination of the appeal taken from the order of the Supreme Court, Bronx County, entered on or about April 25, 2008,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

Bridget G. Brennan,

Plaintiff,

M-3641

-against-

Index. No. 400187/08

Ruben Soto,

Defendant.

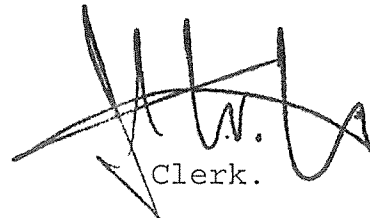
-----X

Defendant having moved for leave to prosecute, as a poor person, the purported appeal from the order and default judgment (one paper) of the Supreme Court, New York County, entered on or about June 20, 2008 (mot. seq. no. 001), for leave to have same heard on the original record and upon a reproduced brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied and sua sponte the purported appeal is dismissed, as no appeal lies from an order/judgment entered on default.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

Saundra L. O.,  
Plaintiff-Respondent,

-against-

M-3047

M-3737

Index No. 32353/81

Andre A. O.,  
Defendant-Appellant.

-----X

Appeals having been taken from the judgment of the Supreme Court, New York County, entered on or about June 25, 2007 and from the modified judgment of said court entered on or about July 23, 2007, respectively,

And an order of this Court having been entered on March 25, 2008 (M-1130) consolidating the aforesaid appeals,

And an appeal having been taken from the order of contempt of said court and warrant of arrest thereof both entered on or about March 3, 2008,

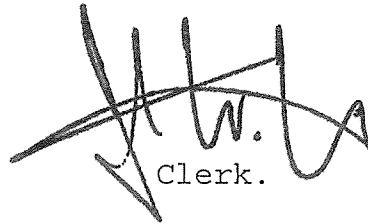
And defendant-appellant having moved for consolidation of the aforesaid appeals and for an enlargement of time in which to perfect same, and for an enlargement of the record on appeal to include the order of Supreme Court, Suffolk County (Robert W. Doyle, J.) dated October 29, 2007, and for a stay of enforcement of the order of contempt and warrant of arrest pending hearing and determination of the aforesaid appeals (M-3047),

And plaintiff-respondent having cross-moved for dismissal of all aforesaid appeals (M-3737),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon, it is

Ordered that defendant-appellant's motion is in all respects denied. The cross motion to dismiss all appeals is granted, and the appeals are dismissed, with leave to defendant-appellant to move for reinstatement of the appeals on condition that defendant-appellant posts an undertaking in the amount of \$363,916.25 within 20 days of the date of entry hereof.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
Merrill Lynch, Pierce, Fenner & Smith,  
Inc.,  
Plaintiff-Respondent,

-against-

M-3352  
Index No. 601198/04

NFS Services, Inc., et al.,  
Defendants-Appellants.

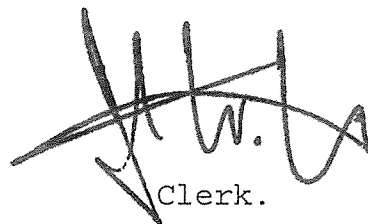
-----X

Plaintiff-respondent having moved to dismiss the appeal from the order of the Supreme Court, New York County, entered on or about June 4, 2008 (mot. seq. no. 010), which denied defendants' CPLR 4404(a) motion to set aside the jury's verdict,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted and the appeal is dismissed.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

In the Matter of a Custody/Visitation Proceeding Under Article 6 of the Family Court Act.

-----  
Terrence R., M-3480  
Petitioner, Docket No. V00568-08/08C

-against-

Angela R.,  
Respondent.

-----X

In the Matter of a Family Offense Proceeding Under Article 8 of the Family Court Act.

-----  
Terrence R., Docket No. 014868/08  
Petitioner,

-against-

Angela R.,  
Respondent.

-----X

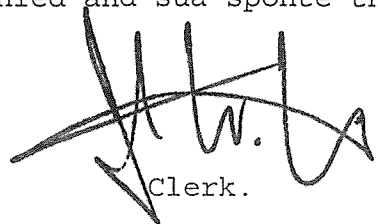
A purported appeal having been taken from a temporary order of custody and from a temporary order of protection of the Family Court, Bronx County, both entered on or about July 2, 2008,

And respondent-appellant mother having moved to vacate the aforesaid orders,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied and sua sponte the appeal is dismissed.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Angela M. Mazzairelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
In the Matter of Arbitration of  
Fee Dispute Arbitration between

Wong, Wong & Associates, P.C.,  
Petitioner-Appellant,

-against-

M-3752  
Index No. 117765/06


Philips Lin,  
Respondent-Respondent.  
-----X

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 10, 2007 (mot. seq. no. 002),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied and, sua sponte, the appeal is dismissed.

E N T E R:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
Mauhoi Tung,  
Plaintiff-Appellant,

-against-

M-3812  
M-4041  
Index No. 119616/03

Henry Chiu, D.D.S., doing business as  
Mott Street Dental Services P.C.,  
Defendant-Respondent.

-----X

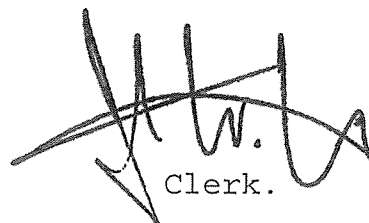
Defendant-respondent having moved for dismissal of the appeal taken from an order of the Supreme Court, New York County, entered on or about June 10, 2008 (mot. seq. no. 003), and for related relief,

And plaintiff-appellant having cross-moved, inter alia, for judgment and award of counsel fees, and for other relief,

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are denied.

ENTER:

  
Clerk.



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
The People of the State of New York,

Respondent,

-against-

Kerry Jordan,

M-3461  
Ind. Nos. 1987/06  
6129/07

Defendant-Appellant.  
-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about May 19, 2008, and for leave to prosecute the appeal as a poor person on the original record and upon a reproduced appellant's brief, and for assignment of counsel,

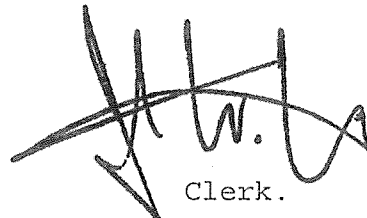
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the notice of appeal timely filed, and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-3494  
Ind. No. 4307/07

Lawrence Mendez,  
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about July 7, 2008, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

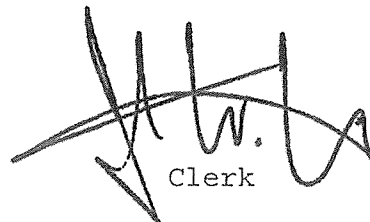
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Leland G. DeGrasse, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-3862  
Ind. No. 2923/04

Marlon Henry, also known as  
Merlin Henry,  
Defendant-Appellant.

-----X

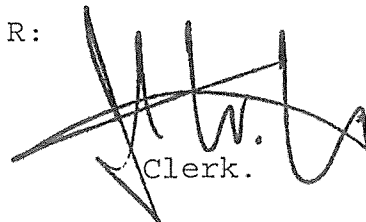
An order of this Court having been entered on June 17, 2008 (M-2308) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about July 9, 2007,

And Richard M. Greenberg, Esq., having moved for an order to be relieved as counsel for defendant and to substitute other counsel to prosecute defendant's appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of assigned Richard M. Greenberg, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Richard Weinstein, Esq., 2 Pennsylvania Plaza, New York, New York 10121, Tel. No. (212) 292-4842, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

E N T E R:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Leland G. DeGrasse, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against- M-3902  
Case No. 45220C/05

Marcelino Vargas,  
Defendant-Appellant.

-----X


An order of this Court having been entered on May 24, 2007 (M-2183) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about February 2, 2007,

And assigned counsel, Richard M. Greenberg, Esq., having moved for an order to be relieved as counsel for defendant and to substitute other counsel to prosecute defendant's appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of assigned counsel Richard M. Greenberg, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

Enter:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

The People of the State of New York,  
Respondent,

-against- M-3644  
Ind. No. 3291/07

Anthony Mack,  
Defendant-Appellant.

-----X

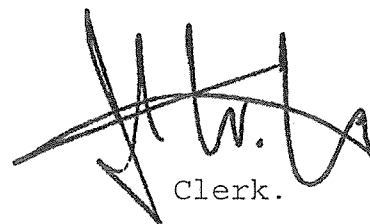
An order of this Court having been entered on May 20, 2008 (M-2006) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 22, 2008,

And assigned counsel, Steven Banks, Esq., having moved for an order to be relieved as counsel for defendant and to substitute other counsel to prosecute defendant's appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of assigned counsel Steven Banks, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

Enter:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

The People of the State of New York,  
Respondent,

-against- M-3857  
Ind. No. 3121/06

Steven Gilmore,  
Defendant-Appellant.

-----X

An order of this Court having been entered on May 20, 2008 (M-1846) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 28, 2007,

And assigned counsel, Robert S. Dean, Esq., having moved for an order to be relieved as counsel for defendant and to substitute other counsel to prosecute defendant's appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of assigned counsel Robert S. Dean, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

Enter:

  
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present : Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
Cory Robinson, Esq.,  
Plaintiff-Respondent,

-against-

M-3663 & M-4102  
Index No. 601766/06

Beth J. Schlossman, Esq., et al.,  
Defendants-Appellants.

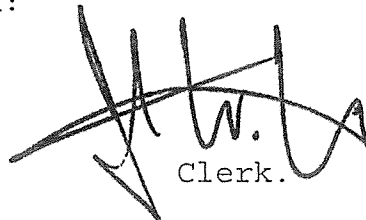
-----X

Defendants-appellants having moved by separate motions for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 21, 2007 (mot. seq. no. 002) [M-3663] and for consolidation of the aforesaid appeal with that taken from the order of said Court entered on or about March 6, 2008 (mot. seq. no. 003) [M-4102],

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are granted to the extent of permitting appellant to prosecute the appeals, which are consolidated, upon 10 copies of one record and of one set of appellant's points covering the appeals. The time in which to perfect the consolidated appeals is enlarged to the January 2009 Term.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X

Natalia Amaro, etc., et al.,  
Plaintiffs-Respondents,

-against-

M-3957  
Index No. 16023/07

Gani Realty Corporation and Bajraktari  
Management Corp.,  
Defendants-Appellants,

Hajdar Bajraktari, et al.,  
Defendants.

-----X

Defendants-appellants having moved for an order staying all proceedings pending hearing and determination of the appeal taken from the order of the Supreme Court, Bronx County, entered on or about April 30, 2008,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted on condition that the appeal is perfected for the February 2009 Term. Upon failure to so perfect, an order vacating the stay may be entered ex parte, provided that plaintiffs-respondents serve a copy of this order upon appellants within 10 days after the date of entry hereof.

ENTER:

  
Clerk.



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,  
James M. Catterson  
Karla Moskowitz  
Rolando T. Acosta, Justices.

-----X  
John McCarthy, et al.,  
Plaintiffs-Respondents,

-against-

Turner Construction, Inc.,  
Defendant,

M-3318 & M-3375  
Index Nos. 107959/05  
590132/06  
590371/06

John Gallin & Son, Inc.,  
Defendant-Appellant,

Boston Properties, Inc., et al.,  
Defendants-Respondents.

- - - - -  
John Gallin & Son, Inc.,  
Third-Party Plaintiff-Appellant,

-against-

Linear Technologies, Inc.,  
Third-Party Defendant-  
Respondent-Appellant.

- - - - -  
Linear Technologies, Inc.,  
Second Third-Party  
Plaintiff-Respondent-Appellant,

-against-

Samuels Datacom, LLC,  
Second Third-Party Defendant-  
Respondent-Appellant.

-----X

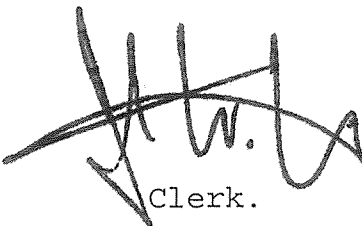
Second third-party defendant-appellant, Samuels Datacom, LLC, having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 12, 2008 [Appeal No. 3938] (M-3318),

And defendant/third-party plaintiff-appellant, John Gallin & Son, Inc., having cross moved for the same relief (M-3375),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are denied.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,  
David B. Saxe  
Luis A. Gonzalez  
John T. Buckley  
Rolando T. Acosta, Justices.

-----X  
In re Daniel Peckham,  
Petitioner-Respondent,

-against-

M-3991  
Index No. 113788/06

Judith A. Calogero, as Commissioner of  
the State of New York's Division of  
Housing and Community Renewal, et al.,  
Respondents-Respondents,

Chelsea Partners, LLC (Landlord),  
Respondent-Appellant.

- - - - -  
327-329 West 22nd Street, LLC,  
Redding Properties, Inc.,  
Idlewild 94-100 Clark, LLC,  
Idlewild 182 State St., LLC,  
Idlewild 186 State St., LLC,  
Idlewild 188 State St., LLC and  
Idlewild 217 St. Johns, LLC,  
Amici Curiae.

-----X

A decision and order of this Court having been entered on June 26, 2008 (Appeal No. 3004), reversing the order and judgment (one paper) of the Supreme Court, New York County (Paul G. Feinman, J.), entered on July 12, 2007,


And petitioner having filed a notice of appeal dated July 30, 2008 to the Court of Appeals from the aforesaid decision and order of this Court,

And petitioner having moved for a stay of eviction pending hearing and determination of the appeal by the Court of Appeals from the aforesaid decision and order,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted on condition that petitioner continues to pay rent as due in accordance with the terms of the lease.

E N T E R:



Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
In the Matter of the Application  
of New York City Pedicab Owners'  
Association, Inc., et al.,  
Petitioners-Respondents,

-against-

M-3885  
Index No. 112671/07


New York City Department of Consumer  
Affairs, et al.,  
Respondents-Appellants.  
-----X

Petitioners-respondents having moved for relief in the nature of a clarification with respect to the automatic stay afforded municipal appellants, pursuant to CPLR 5519(c) subd.1, of the judgment of the Supreme Court, New York County, entered on or about January 22, 2008,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,  
Richard T. Andrias  
David B. Saxe  
Luis A. Gonzalez  
John W. Sweeny, Jr., Justices.

-----X  
TOA Construction Co., Inc.,  
Petitioner-Appellant,

-against-

Michael Tsitsires,  
Respondent-Respondent,

M-3553  
M-3766  
M-3772  
Index No. 570041/06

"John Doe," et al.,  
Respondents.

-----X

Respondent Michael Tsitsires having moved by separate motions for reargument of or, in the alternative, leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 8, 2008 (Appeal No. 2905) [M-3772], and for a stay of further proceedings including eviction pending resolution of the aforesaid motions and appeal to the Court of Appeals (M-3553),

And the National Alliance on Mental Illness of New York City, Inc. ("NAMI") having moved for leave to file a brief amicus curiae in support of the respondent (M-3766),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motion insofar as it seeks reargument, is denied. It is further ordered that the motion, to the extent it seeks leave to appeal to the Court of Appeals, is granted, and this Court, pursuant to CPLR 5713, certifies that the following question of law decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

M-3553  
M-3766  
M-3772

-2-

September 25, 2008

"Was the order of this Court, which affirmed the order of the Supreme Court, properly made?"

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion (M-3772).

Respondent's motion seeking a stay of this Court's order entered July 8, 2008 (Appeal No. 2905) is granted pending hearing and determination of the appeal by the Court of Appeals (M-3553).

It is further ordered that amicus curiae brief submitted with the moving papers herein is deemed filed (M-3766).

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. Richard T. Andrias, Justice Presiding,  
David Friedman  
John T. Buckley  
James M. McGuire  
Karla Moskowitz, Justices.

-----X  
Tania P. Fairclough,  
Plaintiff-Respondent,

-against-

M-2983  
Index No. 23875/04

All Service Equipment Corp.,  
Defendant-Appellant.  
-----X

Plaintiff-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 29, 2008 (Appeal No. 2946),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

E N T E R:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present : Hon. Richard T. Andrias, Justice Presiding,  
David Friedman  
John T. Buckley  
James M. McGuire  
Karla Moskowitz, Justices.

-----X  
Carleton Samuels,

Plaintiff-Respondent,

-against-

Montefiore Medical Center, et al.,

Defendants-Appellants.  
-----X

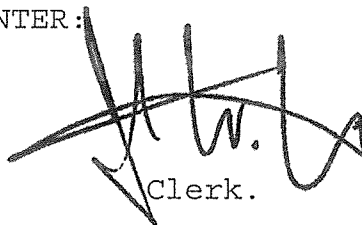
M-2187  
Index No. 13564/01

Plaintiff-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 4, 2008 (Appeal No. 2956),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



Clerk.



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT - Hon. David B. Saxe, Justice Presiding,  
David Friedman  
James M. McGuire  
Dianne T. Renwick, Justices.

-----X  
In re Kent W. Davenport,  
Petitioner-Respondent,

-against-

M-2171  
Index No. 109223/06

Jeffrey Stein,  
Respondent-Appellant.

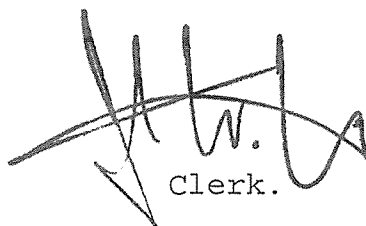
-----X

Respondent-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on November 8, 2007 (Appeal No. 1096),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. David B. Saxe, Justice Presiding,  
Luis A. Gonzalez  
Milton L. Williams  
John T. Buckley, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against-

M-3179  
Ind. No. 7462/97

Jose Borrero,  
Defendant-Appellant.

-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about July 21, 1998,

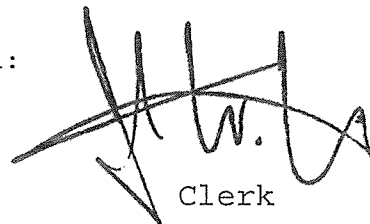
And orders of this Court having been entered on September 29, 1998 (M-5550), January 5, 1999 (M-7421), March 20, 2001 (M-607), June 5, 2001 (M-2590) and September 6, 2001 (M-4352) each, inter alia, denying defendant's motions for leave to prosecute his appeal as a poor person,

And defendant having once again renewed his request for poor person relief,

Now, upon reading and filing the papers with respect to the motion, including the papers submitted by the People, and due deliberation having been had thereon, and upon the Court's own motion it is

Ordered that the motion is denied, and the appeal is dismissed.

E N T E R:



Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. David B. Saxe, Justice Presiding,  
Eugene Nardelli  
Karla Moskowitz  
Rolando T. Acosta  
Leland G. DeGrasse, Justices.

-----X

Robert Bradley, et al.,  
Plaintiffs-Appellants-Respondents,

-against-

IBEX Construction, LLC,  
Defendant-Respondent,

M-3702  
Index Nos. 108416/04  
590989/04  
591184/04

Home Depot U.S.A., Inc., et al.,  
Defendants-Respondents-Appellants,

Ruttura & Sons Construction Co.,  
Defendant.

- - - -

[And A Third-Party Action]

- - - -

IBEX Construction, LLC,  
Second Third-Party Plaintiff-Appellant,

-against-

Sage Electrical Contracting, Inc.,  
Second Third-Party Defendant-Respondent.

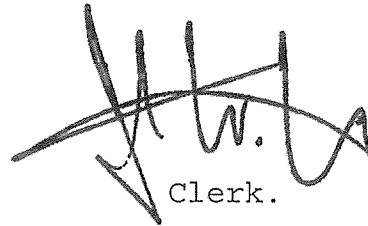
-----X

Defendant/second third-party plaintiff-appellant IBEX Construction, LLC and defendants-respondents-appellants Home Depot U.S.A., Inc. and 23<sup>rd</sup> Street Properties, LLC having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 26, 2008 (Appeal Nos. 4010, 4010A and 4010B),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent that it seeks reargument, is granted, and upon reargument, the decision and order of this Court entered on June 26, 2008 (Appeal Nos. 4010, 4010A and 4010B) is recalled and vacated and a new decision and order substituted therefor. (See Appeal Nos. 4010, 4010A and 4010B, decided simultaneously herewith.) The motion, to the extent that it seeks leave to appeal to the Court of Appeals, is denied.

E N T E R:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Luis A. Gonzalez, Justice Presiding,  
John T. Buckley  
Karla Moskowitz  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
445 East 80th Street Tenants  
Association,  
Petitioner-Respondent,

For a Judgment, etc.,

-against-

M-4197 & M-4264

New York State Division of Housing  
and Community Renewal,  
Respondent-Appellant,

Index No. 110259/06

-and-

Clermont York Associates,  
Intervenor-Respondent-Appellant.

-----X

Separate appeals having been taken from the order of the Supreme Court, New York County, entered on or about May 25, 2007 (mot. seq. no. 001),

And respondent-appellant, New York State Division of Housing and Community Renewal, having moved for an enlargement of time in which to perfect their appeal (M-4197),

And intervenor-respondent-appellant, Clermont York Associates, having moved for the same relief (M-4264),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are granted to the extent of enlarging the time in which to perfect the respective appeals to the January 2009 Term.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Luis A. Gonzalez, Justice Presiding,  
John T. Buckley  
Karla Moskowitz  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
Donald J. Trump, etc., et al.,

Plaintiffs-Appellants,

-against-

M-4136  
Index No. 602877/05

Henry Cheng, et al.,

Defendants-Respondents.  
-----X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, New York County, entered on or about September 19, 2006 and the underlying order of the same Court and Justice entered on or about July 27, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the February 2009 Term.

ENTER:

  
Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present: Hon. Luis A. Gonzalez, Justice Presiding,  
John T. Buckley  
Karla Moskowitz  
Dianne T. Renwick, Justices.

-----X  
In the Matter of the Application of  
The New York State Urban Development  
Corporation,  
Respondent-Respondent,

M-3983

To acquire title in fee in certain  
real property necessary for a land  
use improvement project known as  
The 42<sup>nd</sup> Street Development Project  
(Sites 7 & 8),

Index Nos. 403585/95  
403587/95

Movieplex 42, Inc.,  
244-238 West 42<sup>nd</sup> Street  
New York, New York,  
Block 1013, Lots 12 & 53  
Vesting Date 7/5/95,  
Claimant-Appellant.

-----X

Claimant-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 13, 2007 (mot. seq. no. 004),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the February 2009 Term, with no further enlargements to be granted.

ENTER:

  
Clerk

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Jonathan Lippman,  
Justice of the Appellate Division

-----X  
The People of the State of New York,

M-3671  
Ind. Nos. 10470/97  
10471/97

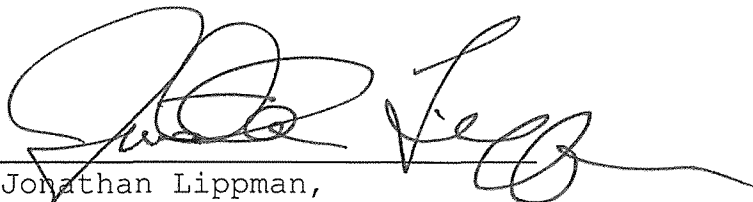
-against-

CERTIFICATE  
DENYING LEAVE

Sheldon Johnson, also known as  
Tyrone Gibbs,  
Defendant.

-----X

I, Jonathan Lippman, a Justice of the Appellate Division,  
First Judicial Department, do hereby certify that, upon  
application timely made by the above-named defendant for a  
certificate pursuant to Criminal Procedure Law, sections 450.15  
and 460.15, and upon the record and proceedings herein, there is  
no question of law or fact presented which ought to be reviewed  
by the Appellate Division, First Judicial Department, and  
permission to appeal from the order of the Supreme Court,  
New York County (Roger S. Hayes, J.), entered on or about June  
12, 2008, is hereby denied.

  
Jonathan Lippman,  
Presiding Justice

Dated: September 18, 2008  
New York, New York

Entered: September 25, 2008



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Jonathan Lippman,  
Justice of the Appellate Division

-----X  
The People of the State of New York,

M-3779  
Ind. No. 2168/00

-against-

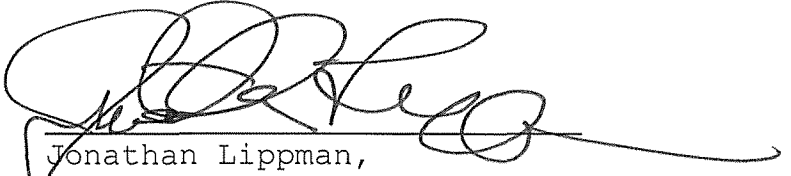
CERTIFICATE  
DENYING LEAVE

Kirt Huggins,

Defendant.

-----X

I, Jonathan Lippman, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the order of the Supreme Court, Bronx County (Michael A. Gross, J.), entered on or about June 24, 2008 is hereby denied.



Jonathan Lippman,  
Presiding Justice

Dated: September 15, 2008  
New York, New York

ENTERED: September 25, 2008

STATE OF NEW YORK  
APPELLATE DIVISION : FIRST DEPARTMENT

BEFORE: Hon. Richard T. Andrias,  
Associate Justice

-----X  
The People of the State of New York,

M-3781  
Ind. No. 5016/02

-against-

CERTIFICATE  
DENYING LEAVE

Jessie Rodriguez, also known as  
Jesse Rodriguez,  
Defendant.

-----X

I, Richard T. Andrias, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendants for a certificate pursuant to Criminal Procedure Law Section 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the Order of the Supreme Court, New York County, (Arlene R. Silverman, J.), entered June 24, 2008, which denied defendant's motion pursuant to CPL 440.10 is hereby denied.

Dated: New York, New York  
September 10, 2008

Entered: September 25, 2008

  
Justice of the Appellate Division

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Rolando T. Acosta  
Justice of the Appellate Division

-----X  
In the Matter of a Proceeding for  
Custody and/or Visitation under  
Article 6 of the Family Court Act,

Liana K.,  
Petitioner-Respondent,  
  
-against-

M-4229  
Docket Nos. V10915/08  
V10916/08  
V10917/08

Raed K.,  
Respondent-Appellant.

-----X


An appeal having been taken from the order of the Family Court, New York County, entered on or about August 27, 2008,

And respondent-appellant having moved for a stay of all proceedings pending hearing and determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

Dated: September 18, 2008  
New York, New York

  
Rolando T. Acosta  
Justice

ENTERED: September 25, 2008

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Leland G. DeGrasse  
Justice of the Appellate Division

-----X  
The People of the State of New York,

M-4121  
Ind. No. 10271/87

-against-

CERTIFICATE  
DENYING LEAVE

Edward Armstrong, Defendant.  
-----X

I, Hon. Leland G. DeGrasse, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the order of the Supreme Court, New York County, entered on or about July 24, 2008, is hereby denied.

Dated: New York, New York  
September 18, 2008

Entered: September 25, 2008



---

Hon. Leland G. DeGrasse  
Justice of the Appellate Division

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Helen E. Freedman  
Justice of the Appellate Division

-----X  
The People of the State of New York,


-against-

Roman Castillo,

Defendant.  
-----X

M-3904  
Ind. No. 1013-99  
1014-99  
CERTIFICATE  
DENYING LEAVE

I, Helen E. Freedman, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the order of the Supreme Court, New York County, entered on or about July 3, 2008 is hereby denied.

  
\_\_\_\_\_  
Hon. Helen E. Freedman  
Associate Justice

Dated: September 15, 2008  
New York, New York

ENTERED: September 25, 2008

CORRECTED ORDER - SEPTEMBER 25, 2008

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present : Hon. Angela M. Mazzarelli, Justice Presiding,  
John T. Buckley  
Rolando T. Acosta  
Dianne T. Renwick  
Leland G. DeGrasse, Justices.

-----X  
Cory Rosenbaum, Esq.,  
Plaintiff-Respondent,

-against-

M-3663 & M-4102  
Index No. 601766/06

Beth J. Schlossman, Esq., et al.,  
Defendants-Appellants.

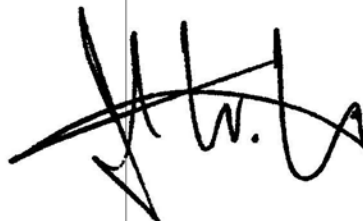
-----X

Defendants-appellants having moved by separate motions for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 21, 2007 (mot. seq. no. 002) [M-3663] and for consolidation of the aforesaid appeal with that taken from the order of said Court entered on or about March 6, 2008 (mot. seq. no. 003) [M-4102],

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are granted to the extent of permitting appellant to prosecute the appeals, which are consolidated, upon 10 copies of one record and of one set of appellant's points covering the appeals. The time in which to perfect the consolidated appeals is enlarged to the January 2009 Term.

ENTER:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

Present - Hon. Peter Tom, Justice Presiding,  
David Friedman  
John T. Buckley  
Rolando T. Acosta  
Helen E. Freedman, Justices.

-----X  
Susan Melnick, et al.,  
Plaintiffs-Appellants,

-against-

Fred Khoroushi, et al.,  
Defendants-Respondents.  
-----X

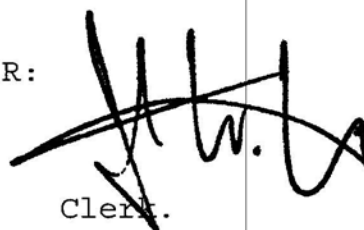
M-4149  
Index No. 109218/07

Plaintiffs-appellants having moved for a stay of enforcement of the order of the Supreme Court, New York County, entered on or about June 18, 2008, pending hearing and determination of the appeal taken therefrom,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted on the terms and conditions of the order of a Justice of this Court, dated August 26, 2008.

E N T E R:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,  
David Friedman  
Eugene Nardelli  
Milton L. Williams  
Helen E. Freedman, Justices.

-----X  
Edmundo Catarino, et al.,  
Claimants-Respondents,

-against-

The State of New York,  
Respondent-Appellant.  
-----X

Court of Claims

M-4316

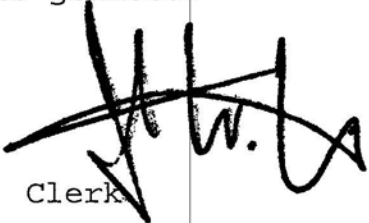
Claim No. 107465

Respondent-appellant having moved for a stay of trial on damages pending hearing and determination of the appeal taken from the order of the Court of Claims of the State of New York entered on or about June 4, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted.

E N T E R:

  
Clerk



At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in in the County of New York on September 25, 2008.

Present: Hon. Richard T. Andrias, Justice Presiding,  
Eugene Nardelli  
James M. McGuire  
Karla Moskowitz  
Dianne T. Renwick, Justices.

-----X  
Rochelle Bengis,

Plaintiff-Respondent,

-against-

Arnold Bengis,

Defendant-Appellant,

Dune Road, Inc.,

Defendant.  
-----X

M-4492  
Index No. 309365/07

Defendant-appellant having taken an appeal from the order of the Supreme Court, New York County, entered on or about September 12, 2008, which inter alia denied his application for an order directing his counsel to release to defendant his passport so to allow for international travel,

And defendant having moved this Court for an order staying the effect of the aforesaid order of Supreme Court, pending hearing and determination of the appeal herein or, in the alternative, vacating the aforesaid order,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied. All concur except McGuire, J. who concurs separately as follows:

McGuire, J. (concurring)

I agree that we should deny the application of defendant husband for equitable relief from this Court pending his appeal from the order described below. Given the unusual facts of this motion, I think it appropriate to explain the rationale of my conclusion.

In 2004, the husband was convicted under a federal statute prohibiting the over-fishing of certain sea life. After serving a sentence of imprisonment, he was released; he is presently on supervised release, which is scheduled to end in January 2009.

The wife commenced this action for divorce. She was awarded temporary support and attorney's fees by Supreme Court, most of which the husband has failed to pay. The wife claims that he has substantial assets because he has interests in several corporate entities. The husband concedes that he has not satisfied all his support obligations and has failed to pay, as directed by the court, certain of the wife's legal fees. He contends, however, that he does not possess the means to satisfy these obligations. While some documentary disclosure has been completed, no depositions have yet been taken.

On July 24, 2008, the husband sought from Judge Lewis A. Kaplan, the District Court Judge who presided over the criminal action, permission to travel abroad from September 25, 2008 to October 8, 2008 to visit family during the Jewish holidays. Specifically, the husband plans to go to Israel and England. According to the husband, his family is paying for the trip. Judge Kaplan granted the request on August 8. The husband then brought an order to show cause before Supreme Court on September 10, seeking, in effect, the court's permission to travel abroad. On this record, it is not entirely clear why the husband sought Supreme Court's permission, but it appears the husband agreed that, in the event the federal probation authorities who were in possession of his passport released it, his counsel would take possession of the passport and would not release it absent Supreme Court's approval. In any event, the wife opposed the motion, and Supreme Court denied it, reasoning that international travel is a privilege, not a right, and that, since the husband failed to pay the court-ordered support and attorney's fees, he should not be afforded that privilege. In addition, Supreme

Court expressed concern that the husband might secrete or transfer assets while abroad. With respect to Judge Kaplan's order granting the husband permission to travel, Supreme Court concluded that the federal court was concerned only with monitoring the husband's whereabouts, while Supreme Court was concerned with the rights of the parties to the matrimonial action.

The husband now seeks what he characterizes as a stay of Supreme Court's order so that he can take this trip. It is not clear what authority Supreme Court has to prevent a litigant in a civil case from traveling abroad; Supreme Court cited none and the wife points to no precedent recognizing such authority. Notably, the husband has not been found in contempt. Moreover, he has a constitutionally protected right to travel (see *Haig v Agee*, 453 US 280, 307 [1981] [the right of international travel, while not unqualified like the right of interstate travel, is an aspect of the "liberty" protected by the Due Process Clause of the Fifth Amendment]). Furthermore, the husband and wife have no minor children, so there is no concern over the possibility that the husband might abscond with a child (cf. *Matter of Welsh v Lewis*, 292 AD2d 536 [2002]). Nor would it be sensible to conclude that the husband poses a flight risk, assuming the relevance of that issue. Putting aside that he is a United States citizen, the husband would run the risk of being sent back to prison for violating the terms of his supervised release if he were to fail to return, an act that would be all the more irrational given that his term of supervised release will end in a little more than three months. Thus, it is hardly surprising that Judge Kaplan approved the husband's trip and that the federal probation authorities did not oppose it. Furthermore, in the event the husband for some inexplicable reason failed to return, Supreme Court would not be powerless (see generally *Wechsler v Wechsler*, 45 AD3d 470 [2007]).

To the extent Supreme Court relied on the possibility that the husband would transfer or secrete assets while abroad, suffice it to say there is no reason to conclude that the husband could not do so while residing in the United States.

In short, the husband has made a strong showing of a likelihood of success on the merits and, because of the constitutional dimension of his right to travel abroad, a showing of irreparable injury (see generally *Mitchell v Cuomo*, 748 F2d

804, 806 [2d Cir 1984] ["When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary"] [internal quotation marks and citation omitted]). If the husband was able to meet his support and other obligations, that of course would be a serious matter that would weigh heavily against him in balancing the equities. But on this record, and absent a finding of contempt -- a finding that would be premised on a determination by Supreme Court that the husband was able to satisfy those obligations but nonetheless unjustifiably refused to pay -- we cannot assume that he is in effect a contemnor. Nor can we assume that denying the application for a stay would induce compliance.

Although the parties assume that this Court has the authority to grant relief to the husband pending the determination of his appeal, whether this Court has that authority is not clear. The order from which the husband appeals is prohibitory, rather than executory, in character, and CPLR 5519 does not authorize the court to which an appeal is taken to stay such an order (see *Matter of Pokoik v Dept. of Health Servs. of County of Suffolk*, 220 AD2d 13, 14-15 [1996]; see also 200 Siegel's Practice Rev. 1 [Aug. 2008], citing *All American Crane Serv. v Omran*, motion no. 3228 [1st Dept August 12, 2008]). The provisions of CPLR 5518 are not applicable here either because this is not a "case specified in [CPLR] section 6301" (CPLR 5518). However, the absence of statutory authority is not dispositive as this Court has inherent authority beyond that conferred by CPLR 5518. As a panel of the Second Department has stated:

"Future acts which are not expressly directed by the order or judgment appealed from may nevertheless have the effect of changing the status quo and thereby defeating or impairing the efficacy of the order which will determine the appeal. In such cases, no automatic stay is available but the aggrieved party may apply to the appellate court to exercise ... its inherent power to grant a stay of such acts in aid of its appellate jurisdiction" (*Pokoik*, 220 AD2d at 16).

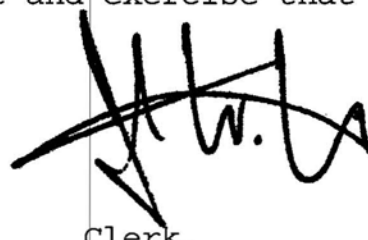
Similarly, as the Court of Appeals stated in *Matter of Schneider v Aulisi* (307 NY 376, 384 [1954]), "the Supreme Court has inherent power in a proper case to restrain the parties

before it from taking action which threatens to defeat or impair its exercise of jurisdiction."

If left undisturbed, the order appealed would "defeat[] or impair[] the efficacy" of an order determining the appeal if that order were favorable to the husband's position. After all, if this Court grants the husband no relief pending the appeal, the appeal will become moot before it can be resolved on the merits. This Court could not issue an order that would alter the fact that the husband had not traveled to Israel and England or affect the practical rights of the parties (see *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]).<sup>1</sup> If this Court were to issue an order purporting to grant the husband permission to take the trip to Israel and England, the appeal also would be rendered moot before it could be resolved on the merits. Moreover, having traveled to Israel and England, there would be no reason for the husband to continue to prosecute the appeal. In short, whether we grant or deny the husband's application, the appeal will be rendered moot.

Of course, there is no order we can issue that would permit the husband to take the trip. Thus, despite our inherent authority to protect our jurisdiction, we cannot protect it in this case by issuing an order restraining one of the parties from taking an action that might defeat or impair our jurisdiction. Either we would have to issue an order directing Supreme Court to grant permission to the husband or we would have to issue our own order granting permission. The former would be tantamount to a summary reversal and the latter would be a summary reversal. In the absence of precedent supporting the proposition that we are authorized to do so, or necessitous circumstances involving a risk of public harm, I am loath to assume and exercise that authority.

Enter:



Clerk.

---

<sup>1</sup>It is possible, of course, that the husband might rely on the exception to the mootness doctrine for "important and recurring issues which, by virtue of their relatively brief existence, would be rendered otherwise nonreviewable" (*Matter of Hearst Corp.*, 50 NY2d at 714). Needless to say, I express no opinion on the applicability of that exception.