

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

M246719
E/sl

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JEFFREY A. COHEN
COLLEEN D. DUFFY, JJ.

2016-04005, 2017-03312

DECISION & ORDER ON MOTION

M&T Bank, respondent,
v Janet P. Capolino, etc., appellant.

(Index No. 3533/09)

Motion by the appellant to enlarge the time to perfect an appeal from a judgment of the Supreme Court, Dutchess County, dated February 1, 2017, and, in effect, to consolidate that appeal with an appeal from an order of the same court dated March 1, 2016, to deem the appellant's appendix and briefs filed in connection with the order to be filed in connection with the judgment, and for leave to serve and file a supplemental appellant's appendix containing the judgment and the notice of appeal from the judgment. Cross motion by the respondent to dismiss the appeal from the judgment for failure to timely perfect and to dismiss the appeal from the order on the ground that the right of direct appeal therefrom terminated upon entry of the judgment (*see Matter of Aho*, 39 NY2d 241).


Upon the papers filed in support of the motion and the cross motion, and the papers filed in opposition thereto, it is

ORDERED that the motion is granted, and on or before March 26, 2018, the appellant shall serve and file a supplemental appellant's appendix containing the judgment and the notice of appeal from the judgment; and it is further,

ORDERED that the branch of the cross motion which is to dismiss the appeal from the judgment is denied; and it is further,

ORDERED that the branch of the cross motion which is to dismiss the appeal from the order is held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

MASTRO, J.P., BALKIN, COHEN and DUFFY, JJ., concur.

ENTER: 
Aprilanne Agostino
Clerk of the Court

March 2, 2018

M&T BANK v CAPOLINO