

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

M247358
E/afa

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
SANDRA L. SGROI
FRANCESCA E. CONNOLLY, JJ.

2017-03166

DECISION & ORDER ON MOTION

Alan Ballinger, et al., plaintiffs/counterclaim
defendants-appellants, v Stelle Architects, PLLC,
defendant/counterclaim plaintiff-respondent.

(Index No. 17642/06)

Motion by Stelle Architects, PLLC, to dismiss an appeal from an order of the Supreme Court, Suffolk County, dated January 3, 2017, for failure of the plaintiffs/counterclaim defendants-appellants to serve it with a copy of the record and on the ground that the record omits an affirmation in opposition of Daniel C. Ross, dated September 29, 2016. Separate motion by Stelle Architects, PLLC, to enlarge the time to serve and file a brief. By decision and order on motion of this Court dated February 26, 2018, the matter was remitted to the Supreme Court, Suffolk County, to report on whether that court considered the affirmation in opposition of Daniel C. Ross, dated September 29, 2016, in connection with the motion which was determined by the order dated January 3, 2017, and the motions were held in abeyance in the interim.

Upon the papers filed in support of the motion to dismiss the appeal and the papers filed in opposition thereto, and upon the papers filed in support of the motion to enlarge the time to serve and file a brief and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion to dismiss the appeal is denied on condition that on or before April 13, 2018, the plaintiffs/counterclaim defendants-appellants serve and file a supplemental record containing the affirmation in opposition of Daniel C. Ross, dated September 29, 2016, with annexed exhibits, correct the covers of the record and the brief filed by the plaintiffs/counterclaim defendants-appellants with the Clerk of this Court to reflect the proper statuses of the parties and the appearance by Keegan & Keegan, Ross & Rosner, LLP, serve Keegan & Keegan, Ross & Rosner, LLP, with copies of the record, the brief filed by the plaintiffs/counterclaim defendants-appellants, and the supplemental record, and file proof of service upon Keegan & Keegan, Ross & Rosner, LLP, with this Court; and it is further,

March 13, 2018

BALLINGER v STELLE ARCHITECTS, PLLC

Page 1.

ORDERED that the motion by Stelle Architects, PLLC, is granted, the time for Keegan, Ross & Rosner, LLP, and L'Abbate, Balkan, Colavita & Contini, LLP, to serve and file their respective briefs is enlarged until May 14, 2018, and the briefs shall be served and filed on or before that date.

MASTRO, J.P., LEVENTHAL, SGROI and CONNOLLY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court