

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

M71551
E/sl

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2007-10881

DECISION & ORDER ON MOTION

Winston Mitchell, appellant,
v Marlene Wint-Mitchell, respondent.

(Index No. 12714/07)

Motion by the respondent to dismiss an appeal from a judgment of the Supreme Court, Kings County, entered October 15, 2007, for failure to timely perfect, to vacate a certain notice of pendency, and to award her exclusive use and occupancy of the subject premises.

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

ORDERED that the branch of the motion which is to dismiss the appeal is granted and the appeal is dismissed, without costs or disbursements, for failure to timely perfect in accordance with the rules of this court (*see* 22 NYCRR 670.8[e]); and it is further,

ORDERED that the branches of the motion which are to vacate the notice of pendency, and to award the respondent exclusive use and occupancy of the subject premises are denied without prejudice to seeking this relief in the Supreme Court, Kings County.

RIVERA, J.P., FISHER, LIFSON and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 9, 2008

MITCHELL v WINT-MITCHELL