

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

M71865
E/sl

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-01969

DECISION & ORDER ON MOTION

Erno Goldberger, etc., et al., respondents,
v Benjamin Eisner, defendant, Sholom
Eisner, appellant.

(Index No. 17302/02)

Motion by the respondents to dismiss an appeal from an order of the Supreme Court, Kings County, dated December 25, 2007, on the ground that the appeal was untimely taken (*see* CPLR 5513) and on the ground that the respondents were not served with the notice of appeal.

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

ORDERED that on the court's own motion, the notice of appeal, which was timely filed, is deemed timely served (*see* CPLR 5520[a]); and it is further,

ORDERED that the motion is denied.

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

June 13, 2008

GOLDBERGER v EISNER