

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

M71989
E/sl

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2008-04043

DECISION & ORDER ON MOTION

Walter Schwartz, appellant,
v Michele Farkas Miltz, respondent.

(Index No. 11127/04)

Motion by the appellant to stay the distribution of the proceeds of the sale of the subject real property, which are presently being held in escrow by the parties' attorneys, pending hearing and determination of an appeal from a judgment of the Supreme Court, Nassau County, entered May 13, 2008. Application by the appellant to direct the respondent to return the sale proceeds distributed from the respondent's attorneys' escrow account.

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

ORDERED that on the court's own motion, the notice of appeal from a decision of the same court entered April 28, 2008, is deemed to be a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

ORDERED that the motion is granted to the extent that the distribution of the proceeds of the sale of the subject real property that are presently being held in escrow by the appellant's attorney, is stayed pending hearing and determination of the appeal on condition that the appeal is perfected on or before July 21, 2008, and the motion is otherwise denied as academic; and it is further,

ORDERED that in the event the appeal is not perfected on or before July 21, 2008, the court, on its own motion, may vacate the stay, or the respondent may move to vacate the stay, on three days notice; and it is further,

June 19, 2008

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ORDERED that the application is denied.

RIVERA, J.P., LIFSON, SANTUCCI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court