

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

M76811  
S/sl

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
WILLIAM E. McCARTHY  
JOHN M. LEVENTHAL, JJ.

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2008-03323

DECISION & ORDER ON APPLICATION

Noel Smith, plaintiff, v Merrill Lynch & Co., Inc., defendant-appellant, Fitzgerald & Fitzgerald, P.C., defendant third-party plaintiff-appellant; County of Nassau, third-party defendant-respondent, et al., third-party defendants.

(Index No. 9299/04)

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Application by the defendant third-party plaintiff-appellant pursuant to 22 NYCRR 670.8(d)(2) to enlarge the time to perfect an appeal from an order of the Supreme Court, Nassau County, dated March 3, 2008.

Upon the papers filed in support of the motion and no papers having been filed in opposition thereto, it is

ORDERED that the appeal by Merrill Lynch & Co., Inc., is dismissed, without costs or disbursements, as it is not aggrieved by the order on appeal (*see Pennsylvania General Ins. Co., v Austin Powder Co.*, 68 NY2d 465, 472-473); and it is further,

ORDERED that the application is granted and the movant's time to perfect the appeal is enlarged until December 8, 2008, and the record or appendix on the appeal and the movant's brief must be served and filed on or before that date.

FISHER, J.P., COVELLO, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

October 9, 2008

SMITH v MERRILL LYNCH & CO., INC.