

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

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S/sl

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
MARK C. DILLON  
EDWARD D. CARNI, JJ.

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2007-00884

DECISION & ORDER ON MOTION

Metropolitan Bank & Trust Company, appellant,  
v Rolf W. Wittich, et al., respondents.  
(Appeal No. 1)

2007-10659

Metropolitan Bank & Trust Company, respondent,  
v Rolf W. Wittich, et al., appellants.  
(Appeal No. 2)

(Index No. 2193-04)

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Motion by Bell Oil Terminal, Inc., Ameropan Oil Corp., and Ameropan Realty Corporation to dismiss an appeal from an order of the Supreme Court, Suffolk County, dated November 28, 2006 (Appellate Division Docket No. 2007-00884), on the ground that the appeal has been rendered academic, or, in the alternative, to consolidate that appeal with appeal from an order of the same court dated October 19, 2007 (Appellate Division Docket No. 2007-10659), to allow the appeals from the order dated October 19, 2007, to be perfected using the record on appeal submitted in connection with the appeal from the order dated November 28, 2006, supplemented by a record containing the papers submitted in connection with the motion to reargue, which was determined by the order dated October 19, 2007, and to enlarge their time to serve and file a brief as respondents on the appeal from the order dated November 28, 2006. Application by Metropolitan Bank & Trust Company to direct the movants to pay a share of the cost of the record on appeal submitted in connection with the appeal from the order dated November 28, 2006. By decision and order on motion dated January 3, 2008, that branch of the motion which was to dismiss the appeal from the order dated November 28, 2006, was held in abeyance and was referred to the panel of Justices hearing that appeal for determination upon the argument or submission thereof. By stipulation dated October 2, 2008, the appeals were withdrawn.

October 28, 2008

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Now, on the court's own motion, it is

ORDERED that so much of the decision and order on motion as held in abeyance that branch of the motion which was to dismiss the appeal from the order dated November 28, 2006, is recalled and vacated, and that branch of the motion is denied as academic in light of the withdrawal of the appeals.

RIVERA, J.P., RITTER, DILLON and CARNI, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court