

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

M78060  
E/sl

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2008-04816

DECISION & ORDER ON MOTION

Boswell A. Johnson, et al., respondents,  
v Bertin Tranquille, et al., appellants.

(Index No. 9901/04)

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Motion by the respondents to dismiss an appeal from an order of the Supreme Court, Kings County, dated March 28, 2008, or, in the alternative, to enlarge the time to serve and file a brief.

Upon the papers filed in support of the motion and the papers filed in opposition 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, as no appeal lies from an order entered upon the default of the appealing party (*see Marino v Termini*, 4 AD3d 342); and it is further,

ORDERED that the motion is otherwise denied as academic.

RIVERA, J.P., LIFSON, ENG and CHAMBERS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

November 3, 2008

JOHNSON v TRANQUILLE