

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

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E/cb

PETER B. SKELOS, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
RANDALL T. ENG, JJ.

2008-04276

DECISION & ORDER ON MOTION

Carl Louis Barzilay, et al., appellants,
v Kmart Corporation, respondent.

(Index No. 6058/05)

Motion by the appellant to enlarge the time to perfect an appeal from an order of the Supreme Court, Suffolk County, dated December 21, 2007.

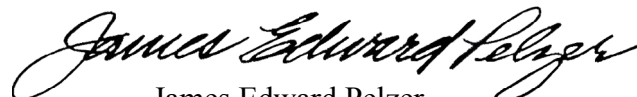
Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that on the court's own motion, the appeal is dismissed, without costs or disbursements, on the ground that no appeal lies as of right from an order that is not the result of a motion made on notice (*see* CPLR 5701), and we decline to grant leave to appeal; and it is further,

ORDERED that the motion is denied as academic.

SKELOS, J.P., DILLON, McCARTHY and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 18, 2008

BARZILAY v KMART CORPORATION