

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

M87878  
E/sl

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

---

2009-02592, 2009-03019

DECISION & ORDER ON MOTION

Zev Yourman, appellant,  
v Mitchell Shpelfogel, respondent.

(Index No. 23576/07)

---

Motion by the appellant for leave to prosecute appeals from two orders of the Supreme Court, Kings County, dated June 24, 2008, and December 1, 2008, respectively, as a poor person.

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 from the order dated December 1, 2008 (Appellate Division Docket No. 2009-03019), 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, without prejudice to the appellant making a motion in the Supreme Court, King County, to vacate the order dated December 1, 2008, and taking an appeal from an order determining that motion, if necessary; and it is further,

ORDERED that the branches of the motion which are for poor person relief and for the assignment of counsel with respect to the appeal from the order dated December 1, 2008, are denied as academic; and it is further,

ORDERED that the branch of the motion which is for leave to prosecute the appeal from the order dated June 24, 2008 (Appellate Division Docket No. 2009-02592), on the original papers is granted, and the appeal will be heard on the original papers (including the transcript of the

June 15, 2009

YOURMAN v SHPELFOGEL

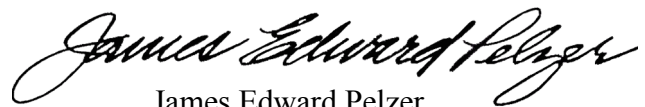
Page 1.

proceedings, if any) and on the briefs of the parties, who are directed to file nine copies of their respective briefs and to serve one copy on each other; and it is further,

ORDERED that the branches of the motion which are to waive payment of the filing fee, for free transcripts, and for the assignment of counsel with respect to the appeal from the order dated June 24, 2008, are denied.

SKELOS, J.P., ANGIOLILLO, CHAMBERS and LOTT, 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