

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

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E/sl

PETER B. SKELOS, J.P.
STEVEN W. FISHER
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-02419

DECISION & ORDER ON MOTION

Samuel Figueroa, respondent-appellant,
v Felice Tornabene, et al., appellants-respondents,
Metropolitan Lumber, Hardware and Building
Supplies, Inc., et al., defendants.

(Index No. 23754/06)

Motion by the appellants-respondents on an appeal and cross appeal from an order of the Supreme Court, Queens County, entered January 21, 2009, in effect, to amend so much of a decision and order on motion of this court dated April 15, 2009, as conditioned a stay of the trial in the above-entitled action upon the perfection of the appeal on or before May 15, 2009, and to enlarge the record to include certain opposition papers allegedly submitted to the Supreme Court, Queens County. Cross motion by the respondent-appellant to vacate the stay.

Upon the papers filed in support of the motion and the cross motion, and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is, in effect, to amend so much of the decision and order on motion dated April 15, 2009, as conditioned a stay of the trial upon the perfection of the appeal on or before May 15, 2009, is granted, and the decision and order on motion dated April 15, 2009, is amended by deleting from the decretal paragraphs thereof the date "May 15, 2009," and substituting therefor the date "July 13, 2009"; and it is further,

ORDERED that the branch of the motion which is to enlarge the record to include certain opposition papers is denied without prejudice to renew upon a determination by the Supreme Court, Queens County, of the appellants-respondents' pending motion for leave to reargue or to the

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FIGUEROA v TORNABENE

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appellant taking an appeal therefrom; and it is further,

ORDERED that the cross motion is denied.

SKELOS, J.P., FISHER, LEVENTHAL 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