

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

M88107
E/cb

FRED T. SANTUCCI, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-05496, 2009-05351

DECISION & ORDER ON MOTION

Yetta Tropp, respondent,
v Michael B. Lumer, et al., defendants,
Samuel A. Abady, appellant.

(Index No. 37517/01)

Motion by the appellant on appeals from two orders of the Supreme Court, Kings County, dated March 17, 2008, and April 1, 2009, respectively, to strike stated portions of the brief filed by the respondent in connection with the appeal from the order dated March 17, 2008, on the ground that it refers to matter de hors the record, and to enlarge the time to serve and file a reply brief in connection with that appeal. Cross motion by the respondent to dismiss the appeal from the order dated March 17, 2008, on the ground that it has been rendered academic.

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 to strike stated portions of the brief filed by the respondent in connection with the appeal from the order dated March 17, 2008 (Appellate Division Docket No. 2008-05496), is granted and references to the addendum contained in that brief are stricken, and on or before July 17, 2009, the respondent shall remove those references from the copies of the brief filed with the Clerk of the court or serve and file a replacement brief that does not contain the stricken material; and it is further,

ORDERED that the branch of the motion which is to enlarge the time to serve and file a reply brief in connection with the appeal from the order dated March 17, 2008, is granted, the appellant's time to serve and file a reply brief is enlarged until August 1, 2009, and the reply brief must be served and filed on or before that date; and it is further,

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ORDERED that the cross motion is denied; and it is further,

ORDERED that on the court's own motion, the appeal from the order dated March 17, 2008, will be calendared together with the appeal from the order dated April 1, 2009 (Appellate Division Docket No. 2009-05351), and the appeals will be argued or submitted on the same day; and it is further,

ORDERED that the appellant shall perfect the appeal from the order dated April 1, 2009, on or before August 16, 2009.

SANTUCCI, J.P., FLORIO, DICKERSON and LOTT, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court