

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

M89025  
E/sl

WILLIAM F. MASTRO, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

---

2009-04846, 2009-04850

DECISION & ORDER ON MOTION

Jacqueline Rose, plaintiff,  
v Thomas Rose, defendant.

(Index No. 33527-06)

---

Motion by Jacqueline Rose for leave to appeal to this court from an order of the Supreme Court, Suffolk County, dated December 24, 2008, a report of a referee dated April 30, 2009, and, in effect, to stay enforcement of the order and referee's report, pending hearing and determination of the appeals, and to consolidate the appeals.

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 for leave to appeal is denied; and it is further,

ORDERED that on the court's own motion, the appeal from the order dated December 24, 2008 (Appellate Division Docket No. 2009-04850), 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; 5011), without prejudice to taking an appeal from the judgment of divorce once entered; and it is further,

ORDERED that on the court's own motion, the appeal from the referee's report dated April 30, 2009 (Appellate Division Docket No. 2009-04846), is dismissed, without costs or disbursements, on the ground that the referee's report is not appealable (*see Levy v Levy*, 20 AD3d 511); and it is further,

July 7, 2009

ROSE v ROSE

Page 1.

ORDERED that the motion is otherwise denied as academic.

MASTRO, J.P., COVELLO, BALKIN and LEVENTHAL, 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