

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

M89276
K/nl

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
HOWARD MILLER
RUTH C. BALKIN, JJ.

2008-09782

ORDER TO SHOW CAUSE

Berkeley Terrace Apartment Company, L.P.,
appellant, v Berkeley Acquisitions, LLC, et al.,
respondents.

(Index No. 43820/07)

The plaintiff, Berkeley Terrace Apartment Company, L.P., having appealed to this Court from an order of the Supreme Court, Kings County, dated September 2, 2008, and having perfected the appeal on November 25, 2008, the defendant Michael Gindi having filed a respondent's brief on December 12, 2008, and a reply brief having been filed on December 29, 2008, the matter was placed on this Court's calendar for March 10, 2009. By letter dated June 18, 2009, counsel for the respondent Michael Gindi advised this Court that the appeal had been rendered academic by the entry of a final stipulation and dismissal of a related New Jersey action in February 2009.

Now, on the Court's own motion, it is

ORDERED that the parties and their counsel are directed to show cause before this Court why an order should or should not be made and entered dismissing the appeal as academic and imposing such sanctions and/or costs, if any, against the parties to the appeal and/or their respective counsel pursuant to 22 NYCRR 670.2(g) as this Court may deem appropriate by each filing an affirmation or affidavit on that issue in the office of the Clerk of this Court and serving one copy of the same on all parties to the action on or before September 4, 2009.

Section 670.2(g) of the rules of this Court provides, in relevant part, that "[i]f a cause or the underlying action or proceeding is wholly or partially settled or if any issues are wholly or

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partially rendered moot, or if any cause should not be calendared * * * for some other reason, the parties or their counsel shall immediately notify the court,” and “[a]ny attorney or party who, without good cause shown, fails to comply with the requirements of this subdivision shall be subject to the imposition of such costs and/or sanctions as the court may direct” (22 NYCRR 670.2[g]).

The Clerk of this Court, or his designee, is directed to serve a copy of this order to show cause upon counsel for the respective parties by regular mail.

SPOLZINO, J.P., FISHER, MILLER and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court