

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

M90261
B/sl

ANITA R. FLORIO, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-03257, 2009-00156

DECISION & ORDER ON MOTION

Stephanie Le, respondent
v *Kevin Le*, *respondent-appellant*;
Lynn J. Brustein-Kampel, et al., *nonparty-*
appellants-respondents.
(Appeal No. 1)

Stephanie Le, respondent
v *Kevin Le*, appellant.
(Appeal No. 2)

(Index No. 2369/07)

On the court's own motion, it is

ORDERED that its decision and order on motion dated July 2, 2009, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by *Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C.*, on *appeal and cross appeal* from a judgment of the Supreme Court, IDV Part, Rockland County, entered February 25, 2009, and an appeal from a decision of the same court dated November 10, 2008, to stay the distribution of the proceeds of the sale of the marital residence, pending hearing and determination of the *appeal and cross appeal* from the judgment. Separate motion by *Kevin Le* for leave to prosecute his *appeals* as a poor person and for the assignment of counsel.

Upon the papers filed in support of the motions, the papers filed in opposition to the motion of *Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C.*, and the papers filed in relation to the motion of *Kevin Le*, it is

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ORDERED that on the court's own motion, the appeal from the decision dated November 10, 2008 (Appellate Division Docket No. 2009-00156), is dismissed without costs or disbursements on the ground that no appeal lies from a decision (*Schicchi v Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the motion of *Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C.* is granted to the extent that the distribution of the sum of \$50,000 from the net proceeds of the sale of the marital residence is stayed pending hearing and determination of the *appeal and cross appeal* from the judgment dated February 25, 2009 (Appellate Division Docket No. 2009-03257), on condition that *Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C.* perfect their appeal on or before July 31, 2009, and the motion is otherwise denied; and it is further,

ORDERED that in the event the appeal of *Lynn J. Brustein-Kampel and Abel & Brustein-Kampel, P.C.* is not perfected on or before July 31, 2009, the court, on its own motion, may vacate the stay, or the parties may move to vacate the stay, on three days notice; and it is further,

ORDERED that the branch of the motion of Kevin Le which is for leave to prosecute his appeal from the decision as a poor person and for the assignment of counsel with respect to that appeal is denied as academic; and it is further,

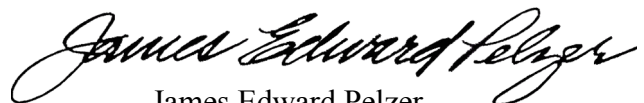
ORDERED that the branch of the motion of Kevin Le which is for leave to prosecute his *appeal* from the judgment on the original papers is granted, and his *appeal* from the judgment will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the parties' briefs; the parties 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 branch of the motion of Kevin Le which is for leave *to* waive the filing fee with respect to *his appeal* from the judgment, for free transcripts, and for the assignment of counsel with respect to *that appeal* is denied; and it is further,

ORDERED that Kevin Le's time to serve and file a brief in connection with *his appeal* from the judgment, *including his points of argument on his cross appeal* (see 22 NYCRR 670.8[c][3]), is enlarged until August 31, 2009, and Kevin Le's brief shall be served and filed on or before that date.

FLORIO, J.P., MILLER, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court