

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

M90851
S/sl

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2007-10772, 2008-07079

DECISION & ORDER ON MOTION

J.M. Builders & Associates, Inc., respondent,
v James Lindner, et al., appellants.

(Index No. 13539-07)

On the court's own motion, it is

ORDERED that its decision and order on motion dated December 11, 2007, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by James A. Lindner and Agnes M. Lindner for leave to appeal to this court from an order of the Supreme Court, Suffolk County, dated October 31, 2007, and to stay all proceedings in the action pending hearing and determination of the appeal.

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 from so much of the order as directed a hearing is denied; and it is further,

ORDERED that the branch of the motion which is for leave to appeal *is otherwise denied as unnecessary, as the remaining portion of the order is appealable as of right (see CPLR 5701); and it is further,*

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

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ORDERED that on the court's own motion, so much of a decision and order of this court entitled "In the Matter of Dismissal of Causes for Failure to Perfect - August 2008 Calendar", dated September 2, 2008, as dismissed the above-entitled appeal is recalled and vacated and the appeal is reinstated; and it is further,

ORDERED that on the court's own motion, the appeal pending under Appellate Division Docket No. 2007-10772 is deemed to have been perfected by the filing of the appendix and briefs in a related appeal pending under Appellate Division Docket No. 2008-07079, and the appendix and briefs on that appeal are deemed also to be the appendix and briefs on this appeal, and the appeals are consolidated.

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

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court