

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

M91383
E/sl

FRED T. SANTUCCI, J.P.
HOWARD MILLER
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2009-03090

DECISION & ORDER ON MOTION

Linda Miotto, respondent,
v Eric Miotto, appellant.

(Index No. 05-4076)

Motion by the appellant for leave to prosecute an appeal from an order of the Supreme Court, Westchester County, dated January 29, 2009, and for the assignment of counsel.

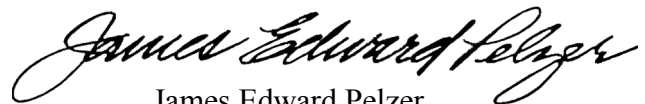
Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that on the court's own motion, the appeal is dismissed, without costs or disbursements, as no appeal lies from an order denying leave to renew and reargue a decision (*see DeFalco v JRS Confectionary*, 118 AD2d 752, 753); and it is further,

ORDERED that the motion is denied as academic.

SANTUCCI, J.P., MILLER, BALKIN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

August 28, 2009

MIOTTO v MIOTTO