

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

M92374
S/sl

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

2008-09782

DECISION & ORDER ON MOTION

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. By order to show cause dated August 17, 2009, the parties and their counsel were 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. Application by the appellant to withdraw the appeal.

Now, upon the Court's own motion and upon the papers filed in response thereto, it is

ORDERED that the appeal is dismissed, without costs or disbursements, on the ground that it has been rendered academic by the entry of a final stipulation and dismissal of a related New Jersey action in February 2009; and it is further,

September 24, 2009

Page 1.

BERKELEY TERRACE APARTMENT COMPANY, L.P. v BERKELEY
ACQUISITIONS, LLC

ORDERED that the application to withdraw the appeal is denied; and it is further,

ORDERED that that within 20 days of service upon it of a copy of this decision and order on motion, Heller, Horowitz & Feit, P.C., counsel for the respondent Michael Gindi, is directed to pay a sanction in the sum of \$1000 to the Lawyers' Fund for Client Protection of the State of New York; and it is further,

ORDERED that that within 20 days of service upon it of a copy of this decision and order on motion, Sadis & Goldberg, LLP, counsel for the appellant, is directed to pay a sanction in the sum of \$500 to the Lawyers' Fund for Client Protection of the State of New York; and it is further,

ORDERED that the Clerk of this Court, or his designee, is directed to serve counsel for the parties with a copy of this decision and order on motion; and it is further,


ORDERED that within 10 days after payment of the sanctions, Heller, Horowitz, & Feit, P.C., and Sadis & Goldberg, LLP, shall file proof of payment with the Clerk of this Court.

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 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]).

Under the circumstances sanctions in the above amounts are warranted.

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

ENTER:


James Edward Pelzer
Clerk of the Court