

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

M92475
E/sl

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-02773

DECISION & ORDER ON MOTION
Motion to Dismiss Appeal

Robert H. Rotering, etc., appellant,
v Perry Satz, et al., respondents.

(Index No. 1743/08)

Motion by the appellant to recall and vacate a decision and order on motion of this court dated August 7, 2009, which dismissed an appeal from an order of the Supreme Court, Dutchess County, dated February 23, 2009, in effect, on the ground that the right of direct appeal from the order terminated upon entry of a judgment in the above-entitled action, dated May 1, 2009, to deem the notice of appeal from the order to be a premature notice of appeal from the judgment, and to enlarge the time to perfect the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted, and the decision and order on motion of this court dated August 7, 2009, is recalled and vacated; and it is further,

ORDERED that the notice of appeal from the order is deemed to be a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

ORDERED that the appellant's time to perfect the appeal is enlarged until October 28, 2009, and the record or appendix on the appeal and the appellant's brief must be served and filed on or before that date; and it is further,

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ORDERED that no further enlargement of time shall be granted.

SKELOS, J.P., DICKERSON, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court