

THE FOLLOWING MOTION ORDERS
WERE ENTERED AND FILED ON
SEPTEMBER 30, 2008

Lippman, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4370X Corwin v Morrisville Auxiliary Corporation
 Appeal withdrawn.

Lippman, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4371X Primedia Inc. v SBI USA, LLC
 Appeal withdrawn.

Lippman, P.J., Tom, Williams, McGuire, Freedman, JJ.

M-3915 Rios v Djavaherian
M-3921

 Time to perfect appeal enlarged to the January 2009
Term (M-3921); dismissal of appeal granted unless perfected for
said Term, as indicated (M-3915).

Lippman, P.J., Tom, Williams, Acosta, JJ.

M-2599 Reyes v Harding Steel, Inc.
M-2704 (And other actions)
M-2762

 Reargument or other relief denied.

Lippman, P.J., Saxe, Buckley, Acosta, JJ.

M-2853 Coker v City of New York Department of Probation
Reargument or other relief denied.

Lippman, P.J., Gonzalez, Moskowitz, Acosta, JJ.

M-3004 Leffler v Feld
Reargument or other relief denied.

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-3069 Baker v Bronx Lebanon Hospital Center
M-3070
Reargument or other relief denied.

Lippman, P.J., Mazzarelli, Williams, Sweeny, Acosta, JJ.

M-3262 Lumbermens Mutual Casualty Company v The Commonwealth
of Pennsylvania
Reargument or other relief denied.

Lippman, P.J., Tom, Gonzalez, Buckley, Renwick, JJ.

M-3505 Sacca v 41 Bleeker Street Owners Corp.
Reargument or other relief denied.

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-3912 Estate of Golden - Golden v Golden
Reargument or other relief denied.

Lippman, P.J., Tom, Andrias, Saxe, JJ.

M-3662 Peter-MacIntyre v Lynch International, Inc.
Reargument denied.

Lippman, P.J., Gonzalez, Sweeny, Catterson, DeGrasse, JJ.

M-4252 Katsam Holdings LLC v 419 West 55th Street Corporation

Stay granted on condition that (1) appellant consents to plaintiff's payment of monthly maintenance to appellant's counsel to be held in escrow; (2) appellant posts a certain undertaking amount; and (3) appellant perfects appeal on or before November 10, 2008 for the January 2009 Term, as indicated.

Tom, J.P., Gonzalez, Sweeny, Catterson, Moskowitz, JJ.

M-3313 A-1 Capital Corp. v Jehova Shalom, Inc.
M-3552

Time to perfect appeal enlarged to the January 2009 Term; dismissal of appeal denied, as indicated.

Tom, J.P., Mazzairelli, Friedman, Williams, Moskowitz, JJ.

M-3809 Estate of Tarka - Tarka v Public Administrator of
M-3608 the County of New York

Motions consolidated for disposition and so much thereof which seeks an order of this Court setting aside the stipulation of discontinuance denied. So much of the motion which seeks a discontinuance of the appeal granted to the extent of deeming the appeal withdrawn, as indicated.

Tom, J.P., Andrias, Nardelli, Williams, JJ.

M-2887 Galison v Greenberg
M-2926
Reargument or other relief denied.

Tom, J.P., Friedman, Nardelli, Buckley, Renwick, JJ.

M-2937 The Trustees of Princeton University v National Union
Fire Insurance Co. of Pittsburgh, Pa.
Reargument or other relief denied.

Tom, J.P., Williams, Catterson, Acosta, JJ.

M-3103 In re Lancer Insurance Company v Lackraj
Reargument or other relief denied.

Tom, J.P., Saxe, Friedman, Buckley, Catterson, JJ.

M-3244 In re Rownd v The Teachers Retirement System of the
City of New York
Reargument or other relief denied.

Tom, J.P., Friedman, Nardelli, Catterson, JJ.

M-2572 People v Caban, Lynette

Reargument denied.

Tom, J.P., Andrias, Nardelli, Williams, JJ.

M-2986 The State of New York v Seventh Regiment Fund

Reargument denied.

Tom, J.P., Friedman, Nardelli, Buckley, Renwick, JJ.

M-3510 Knee v A.W. Chesterton Co. - The Goodyear Tire & Rubber
Company

Reargument denied.

Tom, J.P., Friedman, Nardelli, Catterson, Moskowitz, JJ.

M-2564 Angel v O'Neill

Leave to appeal to the Court of Appeals denied.

Tom, J.P., Mazzairelli, Andrias, Nardelli, Buckley, JJ.

M-2998 People v Tan, Jian, also known as
Tan, Jian Xiong

Reinstatement and writ of error coram nobis denied.

Tom, J.P., Williams, Buckley, Sweeny, JJ.

M-1468 People v Rubi, Jose

Writ of error coram nobis denied.

Mazzarelli, J.P., Buckley, Acosta, Renwick, DeGrasse, JJ.

M-3736 Rollock v Vardaxis

Appeal dismissed.

Mazzarelli, J.P., Buckley, Acosta, Renwick, DeGrasse, JJ.

M-3099 Cortez v Lalite

Enlargement of time to take a notice of appeal from judgment entered December 19, 2007, or for alternative relief, denied; appeal from order entered August 17, 2007 dismissed.

Mazzarelli, J.P., Catterson, Acosta, Renwick, JJ.

M-3481 Humphreys & Harding, Inc. v Universal Bonding Insurance Company - Welch Construction Corp.

Reargument or other relief denied.

Mazzarelli, J.P., Andrias, Williams, Renwick, JJ.

M-3522 T., Elizabeth Amanda - Graham-Windham Services to Families and Children

Reargument or other relief denied.

Mazzarelli, J.P., Catterson, Moskowitz, Acosta, JJ.

M-3572 Callan v Structure Tone, Inc. v Atlas-Acon Electric Services Corp.

Reargument or other relief denied.

Mazzarelli, J.P., Catterson, Moskowitz, Acosta, JJ.

M-3591 Brenner v Brenner

M-3794

Reargument or other relief denied.

Mazzarelli, J.P., Andrias, Saxe, Friedman, Acosta, JJ.

M-3934 McDonald v Montefiore Medical Center

Time to perfect appeal enlarged to the January 2009 Term, as indicated.

Mazzarelli, J.P., Buckley, Acosta, Renwick, DeGrasse, JJ.

M-3740 In the Matter of Guiden - W., Veronica - Floyd

Leave to unseal record on appeal denied; time to perfect appeal enlarged to the January 2009 Term, as indicated.

Mazzarelli, J.P., Friedman, Gonzalez, Williams, JJ.

M-2805 People v Funches, Trevis

Writ of error coram nobis denied.

Mazzarelli, J.P., Buckley, Acosta, Renwick, DeGrasse, JJ.

M-3898 People ex rel. Boddie, Terence v New York State
Division of Parole

Writ of error coram nobis and other relief denied.

Andrias, J.P., Catterson, McGuire, Renwick, JJ.

M-2463 Freeford Limited v Pendelton
M-2465
M-2614

Reargument or other relief denied.

Andrias, J.P., Friedman, Sweeny, Moskowitz, JJ.

M-2645 Purchase Partners II, LLC v Westreich
(And a third-party action)

Leave to appeal to the Court of Appeals denied.

Andrias, J.P., Nardelli, McGuire, Moskowitz, Renwick, JJ.

M-4096 Batyreva v N.Y.C. Department of Education

Stay granted, as indicated.

Saxe, J.P., Nardelli, Moskowitz, Acosta, DeGrasse, JJ.

M-3527 Aldrich v Marsh & McLennan Companies, Inc.

Reargument or other relief denied.

Saxe, J.P., Nardelli, Moskowitz, Acosta, DeGrasse, JJ.

M-3561 Ronda v Friendly Baptist Church
Reargument or other relief denied.

Saxe, J.P., Sweeny, McGuire, Acosta, JJ.

M-3624 Littman v Magee
Reargument or other relief denied.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-3814 In the Matter of S., Thomas v S., Latisha
Time to perfect appeal enlarged to the February 2009
Term.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-3930 Joseph Chai Corp. v Gemological Institute of America
(And a third-party action)
Time to perfect consolidated appeals enlarged to the
January 2009 Term.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-3910 People v Pena, Victor
Appellant directed to file an appendix containing
certain documents on or before November 10, 2008 for the January
2009 Term; motion otherwise denied, with leave to renew, as
indicated.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-3919 People v Robinson, David

Transcription of minutes directed, as indicated; time to perfect appeal enlarged to the February 2009 Term.

Gonzalez, J.P., Nardelli, Sweeny, McGuire, JJ.

M-3515 Callahan v Carey; Eldredge v Koch

Leave to appeal to the Court of Appeals granted, as indicated; stay granted.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-4033 People v Gumbs, Junior

Leave to file pro se supplemental brief granted to the January 2009 Term, to which Term appeal adjourned, as indicated.

Saxe, J.

M-3785 People v Hemphill, David

Leave to appeal to the Court of Appeals denied.

Friedman, J.

M-3784 People v Soto, Randy

Leave to appeal to the Court of Appeals denied.

Mazzarelli, J.P., Saxe, Friedman, Nardelli, Williams, JJ.

In the Matter of Attorneys Who Are in Violation
of Judiciary Law Section 468-a:

M-4242 Susan Jane Abraham, admitted on 6-18-1984,
at a Term of the Appellate Division,
First Department

This Court's order entered October 12, 2006 [M-3061.9]
recalled and vacated, and the Opinion Per Curiam filed therewith
amended to vacate so much thereof as pertains to the above-named
respondent, as indicated. No opinion. All concur.

Mazzarelli, J.P., Saxe, Friedman, Nardelli, Williams, JJ.

In the Matter of Attorneys Who Are in Violation
of Judiciary Law Section 468-a:

M-4231 Hal Barry Eisenstein, admitted in 1969,
at a Term of the Appellate Division,
Second Department

Respondent reinstated as an attorney and counselor-at-
law in the State of New York, effective the date hereof. No
opinion. All concur.

Tom, J.P., Gonzalez, Sweeny, Catterson, Moskowitz, JJ.

M-2999 In the Matter of Manuel Campos-Galvan,
an attorney and counselor-at-law:

Respondent's name stricken from the roll of attorneys
and counselors-at-law in the State of New York, nunc pro tunc to
June 13, 2008. Opinion Per Curiam. All concur.

The Following Order Was Entered And Filed

On September 23, 2008:

Lippman, P.J., Friedman, Catterson, Moskowitz, JJ.

M-4389 Mike v Riverbay Corporation

Stay of trial denied.

The Following Orders Were Entered And Filed

On September 25, 2008:

Tom, J.P., Friedman, Buckley, Acosta, Freedman, JJ.

M-4149 Melnick v Khoroushi

Stay granted on the terms and conditions of the order of a Justice of this Court, dated August 26, 2008.

Mazzarelli, J.P., Friedman, Nardelli, Williams, Freedman, JJ.

M-4316 Catarino v The State of New York

Stay of trial on damages granted.

Andrias, J.P., Nardelli, McGuire, Moskowitz, Renwick, JJ.

M-4492 Bengis v Bengis

Stay denied. All concur except McGuire, J. who concurs separately as follows:

McGuire, J. (concurring)

I agree that we should deny the application of defendant husband for equitable relief from this Court pending his appeal from the order described below. Given the unusual facts of this motion, I think it appropriate to explain the rationale of my conclusion.

In 2004, the husband was convicted under a federal statute prohibiting the over-fishing of certain sea life. After serving a sentence of imprisonment, he was released; he is presently on supervised release, which is scheduled to end in January 2009.

The wife commenced this action for divorce. She was awarded temporary support and attorney's fees by Supreme Court, most of which the husband has failed to pay. The wife claims that he has substantial assets because he has interests in several corporate entities. The husband concedes that he has not satisfied all his support obligations and has failed to pay, as directed by the court, certain of the wife's legal fees. He contends, however, that he does not possess the means to satisfy these obligations. While some documentary disclosure has been completed, no depositions have yet been taken.

On July 24, 2008, the husband sought from Judge Lewis A. Kaplan, the District Court Judge who presided over the criminal action, permission to travel abroad from September 25, 2008 to October 8, 2008 to visit family during the Jewish holidays. Specifically, the husband plans to go to Israel and England. According to the husband, his family is paying for the trip. Judge Kaplan granted the request on August 8. The husband then brought an order to show cause before Supreme Court on September 10, seeking, in effect, the court's permission to travel abroad. On this record, it is not entirely clear why the husband sought Supreme Court's permission, but it appears the husband agreed that, in the event the federal probation authorities who were in possession of his passport released it, his counsel would take possession of the passport and would not release it absent Supreme Court's approval. In any event, the wife opposed the motion, and Supreme Court denied it, reasoning that international travel is a privilege, not a right, and that, since the husband failed to pay the court-ordered support and attorney's fees, he should not be afforded that privilege. In addition, Supreme Court expressed concern that the husband might secrete or transfer assets while abroad. With respect to Judge Kaplan's order granting the husband permission to travel, Supreme Court concluded that the federal court was concerned only with monitoring the husband's whereabouts, while Supreme Court was concerned with the rights of the parties to the matrimonial action.

The husband now seeks what he characterizes as a stay of Supreme Court's order so that he can take this trip. It is not clear what authority Supreme Court has to prevent a litigant in a civil case from traveling abroad; Supreme Court cited none and the wife points to no precedent recognizing such authority.

Notably, the husband has not been found in contempt. Moreover, he has a constitutionally protected right to travel (see *Haig v Agee*, 453 US 280, 307 [1981] [the right of international travel, while not unqualified like the right of interstate travel, is an aspect of the "liberty" protected by the Due Process Clause of the Fifth Amendment]). Furthermore, the husband and wife have no minor children, so there is no concern over the possibility that the husband might abscond with a child (cf. *Matter of Welsh v Lewis*, 292 AD2d 536 [2002]). Nor would it be sensible to conclude that the husband poses a flight risk, assuming the relevance of that issue. Putting aside that he is a United States citizen, the husband would run the risk of being sent back to prison for violating the terms of his supervised release if he were to fail to return, an act that would be all the more irrational given that his term of supervised release will end in a little more than three months. Thus, it is hardly surprising that Judge Kaplan approved the husband's trip and that the federal probation authorities did not oppose it. Furthermore, in the event the husband for some inexplicable reason failed to return, Supreme Court would not be powerless (see generally *Wechsler v Wechsler*, 45 AD3d 470 [2007]).

To the extent Supreme Court relied on the possibility that the husband would transfer or secrete assets while abroad, suffice it to say there is no reason to conclude that the husband could not do so while residing in the United States.

In short, the husband has made a strong showing of a likelihood of success on the merits and, because of the constitutional dimension of his right to travel abroad, a showing of irreparable injury (see generally *Mitchell v Cuomo*, 748 F2d 804, 806 [2d Cir 1984] ["When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary"] [internal quotation marks and citation omitted]). If the husband was able to meet his support and other obligations, that of course would be a serious matter that would weigh heavily against him in balancing the equities. But on this record, and absent a finding of contempt -- a finding that would be premised on a determination by Supreme Court that the husband was able to satisfy those obligations but nonetheless unjustifiably refused to pay -- we cannot assume that he is in effect a contemnor. Nor can we assume that denying the application for a stay would induce compliance.

Although the parties assume that this Court has the authority to grant relief to the husband pending the determination of his appeal, whether this Court has that

authority is not clear. The order from which the husband appeals is prohibitory, rather than executory, in character, and CPLR 5519 does not authorize the court to which an appeal is taken to stay such an order (see *Matter of Pokoik v Dept. of Health Servs. of County of Suffolk*, 220 AD2d 13, 14-15 [1996]; see also 200 Siegel's Practice Rev. 1 [Aug. 2008], citing *All American Crane Serv. v Omran*, motion no. 3228 [1st Dept August 12, 2008]). The provisions of CPLR 5518 are not applicable here either because this is not a "case specified in [CPLR] section 6301" (CPLR 5518). However, the absence of statutory authority is not dispositive as this Court has inherent authority beyond that conferred by CPLR 5518. As a panel of the Second Department has stated:

"Future acts which are not expressly directed by the order or judgment appealed from may nevertheless have the effect of changing the status quo and thereby defeating or impairing the efficacy of the order which will determine the appeal. In such cases, no automatic stay is available but the aggrieved party may apply to the appellate court to exercise ... its inherent power to grant a stay of such acts in aid of its appellate jurisdiction" (*Pokoik*, 220 AD2d at 16).

Similarly, as the Court of Appeals stated in *Matter of Schneider v Aulisi* (307 NY 376, 384 [1954]), "the Supreme Court has inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction."

If left undisturbed, the order appealed would "defeat[] or impair[] the efficacy" of an order determining the appeal if that order were favorable to the husband's position. After all, if this Court grants the husband no relief pending the appeal, the appeal will become moot before it can be resolved on the merits. This Court could not issue an order that would alter the fact that the husband had not traveled to Israel and England or affect the practical rights of the parties (see *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]).¹ If this Court were to issue an

¹It is possible, of course, that the husband might rely on the exception to the mootness doctrine for "important and recurring issues which, by virtue of their relatively brief existence, would be rendered otherwise nonreviewable" (*Matter of Hearst Corp.*, 50 NY2d at 714). Needless to say, I express no opinion on the applicability of that exception.

order purporting to grant the husband permission to take the trip to Israel and England, the appeal also would be rendered moot before it could be resolved on the merits. Moreover, having traveled to Israel and England, there would be no reason for the husband to continue to prosecute the appeal. In short, whether we grant or deny the husband's application, the appeal will be rendered moot.

Of course, there is no order we can issue that would permit the husband to take the trip. Thus, despite our inherent authority to protect our jurisdiction, we cannot protect it in this case by issuing an order restraining one of the parties from taking an action that might defeat or impair our jurisdiction. Either we would have to issue an order directing Supreme Court to grant permission to the husband or we would have to issue our own order granting permission. The former would be tantamount to a summary reversal and the latter would be a summary reversal. In the absence of precedent supporting the proposition that we are authorized to do so, or necessitous circumstances involving a risk of public harm, I am loath to assume and exercise that authority.