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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 208 SSM 31  
M Entertainment, Inc., et al.,  
Appellants,  
v.  
Laurence Leydier,  
Respondent,  
et al.,  
Defendants.

Submitted by Randall S. D. Jacobs, for appellants.  
Submitted by Christopher R. Belmonte, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed,  
with costs, and the matter remitted to that court for further  
proceedings in accordance with this memorandum.

The Appellate Division erred in concluding that  
plaintiffs' non-compliance with the requirement that mail service

be accomplished by mailing "within the state" (see CPLR 2103 [b] [2], [f] [1]) constituted a "fatal jurisdictional defect" requiring the dismissal of plaintiffs' appeal against Lawrence Leydier. CPLR 5520(a) provides:

"If an appellant either serves or files a timely notice of appeal or notice of motion for permission to appeal, but neglects through mistake or excusable neglect to do another required act within the time limited, the court from or to which the appeal is taken or the court of original instance may grant an extension of time for curing the omission."

Plaintiffs here timely filed their notice of appeal with the New York County Clerk's office, thus authorizing the Appellate Division to determine whether to exercise its discretion pursuant to CPLR 5520(a). By contrast, the movants in Cipriani v Green (lv dismissed 96 NY2d 821 [2001], rearg denied 97 NY2d 639) and National Org. for Women v Metropolitan Life Ins. Co. (lv dismissed 70 NY2d 939 [1988], rearg denied 71 NY2d 890) not only failed to timely serve their notices of motion for leave to appeal, but they also failed to timely file those papers with this Court. Thus, in those cases, the Court could not invoke its discretionary authority under CPLR 5520(a).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 27, 2009