

March 24, 2016

**CASES**

1                    No. 101 SSM 3  
Nancy Cruz,  
    Respondent,  
    v.  
Bronx Lebanon Hospital Center,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. The Appellate Division correctly determined that legally sufficient evidence supported the jury's finding that defendant had constructive notice of the alleged defect.  
Chief Judge DiFiore and Judges Pigott, Rivera, Stein, Fahey and Garcia concur.  
Judge Abdus-Salaam took no part.

1                    No. 102 SSM 4  
Douglas L. Leight, et al.,  
    Plaintiffs,  
John H. Masten,  
    Appellant,  
    v.  
W7879 LLC, et al.,  
    Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question not answered upon the ground that it is unnecessary. Plaintiff John H. Masten failed to establish that his apartment, which was de-regulated in 2000 by an unchallenged order of the Division of Housing and Community Renewal, became re-regulated when he executed a renewal lease at market rate.  
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

                          No. 33  
The People &c.,  
    Respondent,  
    v.  
Nelson Miranda,  
    Appellant.

Order affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1                    No. 42  
PAF-PAR LLC,  
    Appellant,  
    v.  
Michael Silberberg, et al.,  
    Respondents.

Order affirmed, with costs. In this action pursuant to CPLR 3213, PAF-PAR LLC failed to demonstrate standing to maintain the action.  
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1                    No. 39  
In the Matter of Perlbinder Holdings, LLC,  
    Appellant-Respondent,  
    v.  
Meenakshi Srinivasan, &c., et al.,  
    Respondents-Appellants.

Order modified, with costs to the City of New York respondents, by dismissing the petition in its entirety and, as so modified, affirmed.  
Opinion by Judge Pigott.  
Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1                    No. 40  
In the Matter of Kenneth S., &c.,  
    Appellant.

Order affirmed, without costs, in a memorandum.  
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

4                    No. 34  
Spoleta Construction, LLC,  
    Respondent,  
    v.  
Aspen Insurance UK Limited, &c.,  
    Appellant,  
1255 Portland, LLC, et al.,  
    Defendants.

Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum.  
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

## MOTIONS

4                    SSD 24  
Acquest Wehrle, LLC,  
                        Respondent-Appellant,  
                        v.  
Town of Amherst,  
                        Appellant-Respondent.

Appeals dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.

1                    Mo. No. 2016-276  
Ambac Assurance Corporation, et al.,  
                        Appellants,  
                        v.  
Countrywide Home Loans, Inc., et al.,  
                        Defendants,  
Bank of America Corp.,  
                        Respondent.

Motion by New York State Trial Lawyers  
Association for leave to file a brief amicus curiae on  
the appeal herein granted and the proposed brief is  
accepted as filed.

2                    Mo. No. 2016-279  
The People &c.,  
                        Respondent,  
                        v.  
Trevor Anderson,  
                        Appellant.

Motion for assignment of counsel granted and Lynn  
W. L. Fahey, Esq., Appellate Advocates, 111 John  
Street, 9th Floor, New York, NY 10038 assigned as  
counsel to the appellant on the appeal herein.

1                    Mo. No. 2016-201  
The People &c.,  
                        Respondent,  
                        v.  
Peter Austin,  
                        Appellant.

Motion for assignment of counsel granted and Robert  
S. Dean, Esq., Center for Appellate Litigation, 120  
Wall Street, 28th Floor, New York, NY 10005  
assigned as counsel to the appellant on the appeal  
herein.

1                    Mo. No. 2016-177  
The People &c.,  
    Respondent,  
    v.  
Ross Campbell,  
    Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

2                    Mo. No. 2015-1308  
In the Matter of Celso L. Castillo,  
    Appellant,  
    v.  
John B. Latella, &c.,  
    Respondent.

Motion for reargument of motion for leave to appeal denied.  
Chief Judge DiFiore and Judge Garcia took no part.

2                    SSD 19  
City of New York,  
    Respondent,  
    v.  
Kris Gounden,  
    Defendant.  
Posr A. Posr,  
    Non-Party Appellant.

Appeal, insofar as taken from the March 2015 Appellate Division order, dismissed without costs, by the Court sua sponte, upon the ground that such order does not finally determine the action within the meaning of the Constitution; appeal, insofar as taken from the August 2015 Appellate Division order, dismissed without costs, by the Court sua sponte, upon the ground that appellant is not a party aggrieved (see CPLR 5511).

2                    SSD 23  
Concerned Home Care Providers, Inc.,  
    Appellant,  
    v.  
New York State Department of Health, et al.,  
    Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

SSD 17  
Kieran G. Cunningham et al.,  
Appellants,  
v.  
Security Mutual Insurance Company,  
Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies from the order of County Court affirming the Ithaca City Court judgment (see NY Const, art VI, §3[b]; CPLR 5601).

1 Mo. No. 2015-1389  
Nusyn Ehrlich, &c., et al.,  
Appellants,  
v.  
American International Group,  
et al.,  
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2016-183  
The People &c.,  
Respondent,  
v.  
John Gayden,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

1 SSD 21  
Bernard H. Glatzer,  
Appellant,  
v.  
Michael F. Hanley Moving & Storage, Inc., et al.,  
Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

4 Mo. No. 2016-246  
The People &c.,  
Respondent,  
v.  
Curlie Green,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 dismissed as untimely.

1                    Mo. No. 2016-234  
The People of the State of New York by Eric  
T. Schneiderman, &c.,  
                    Respondent,  
                    v.  
Maurice R. Greenberg, et al.,  
                    Appellants.

4                    Mo. No. 2016-263  
Andrew J. Hain, &c.,  
                    Respondent,  
                    v.  
Angela J. Jamison, et al.,  
                    Appellants,  
Drumm Family Farm, Inc.,  
                    Respondent.

3                    Mo. No. 2016-10  
In the Matter of Alan J. Horowitz,  
                    Appellant,  
                    v.  
Brian Fischer, &c., et al.,  
                    Respondents.

3                    SSD 22  
The People &c. ex rel. Levon Isaac,  
                    Appellant,  
                    v.  
Donna Lewin, Superintendent, Hudson  
Correctional Facility, et al.,  
                    Respondents.

3                    Mo. No. 2016-244  
The People &c.,  
                    Respondent,  
                    v.  
Thomas Jackson,  
                    Appellant.

Motion by AARP for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.  
Judge Garcia took no part.

Motion by Nicholas Rivers for leave to file a brief amicus curiae on the appeal herein denied.  
Motion for poor person relief dismissed as academic.

Motion for leave to appeal denied.  
Judge Stein took no part.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Motion for assignment of counsel granted and Mitch Kessler, Esq., 63 Pike Creek Drive, Cohoes, NY 12047 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2015-999  
Jacobson Family Investments, Inc., et al.,  
    Plaintiffs,  
MDG 1994 Grat, LLC,  
    Appellant,  
    v.  
National Union Fire Insurance Company of  
Pittsburgh, PA,  
    Respondent,  
et al.,  
    Defendants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Abdus-Salaam took no part.

4                    Mo. No. 2016-9  
In the Matter of JP Morgan Chase Bank,  
N.A., &c.,  
    Respondent.  
Charles Wehle et al.,  
    Appellants.  
(And Other Proceedings.)

Motion for leave to appeal denied.

2                    SSD 16  
Nella Manko,  
    Appellant,  
    v.  
Lenox Hill Hospital,  
    Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

3                    Mo. No. 2016-18  
John C. McPhillips,  
    Appellant,  
    v.  
Wesley E. Bauman,  
    Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1                   SSD 20  
Linda P. Nash,  
                  Respondent,  
          v.  
The Port Authority of New York and New  
Jersey,  
                  Appellant.

4                   Mo. No. 2016-17  
In the Matter of Tatiana Neroni,  
An Attorney,  
                  Appellant.  
Grievance Committees of the Fourth Judicial  
Department,  
                  Respondent.

1                   Mo. No. 2016-268  
In the Matter of New York City Asbestos  
Litigation  
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Ruby E. Konstantin, &c.,  
                  Respondent,  
          v.  
630 Third Avenue Associates, et al.,  
                  Defendants,  
Tishman Liquidating Corporation,  
                  Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that it does not lie. The terms of this Court's remittitur were not violated and an appeal therefore does not lie as of right. Judge Abdus-Salaam took no part.

Motion, insofar as it seeks disqualification of Judges Stein and Fahey, dismissed as academic; motion, insofar as it seeks disqualification of Chief Judge DiFiore, dismissed upon the ground that the Court has no authority to entertain the motion made on nonstatutory grounds. The application seeking recusal of the Chief Judge is referred to her for individual consideration and determination. Chief Judge DiFiore denies the referred motion for recusal. Motion for ancillary relief denied. On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Judges Stein and Fahey took no part.

Motion by Business Council of New York State et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 Mo. No. 2016-6  
In the Matter of Earl Phillips, &c.,  
Appellant,  
v.  
Manhattan and Bronx Surface Transit  
Operating Authority,  
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2016-165  
The People &c.,  
Respondent,  
v.  
Michael E. Prindle,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.  
Judge Fahey took no part.

1 Mo. No. 2015-1377  
Armand Retamozzo,  
Appellant,  
v.  
Diana Friedland, et al.,  
Respondents.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.  
Motions for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution.

1 SSD 15  
Steven G. Schulman,  
Appellant,  
v.  
Apryl N. Miller,  
Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

1 Mo. No. 2016-184  
The People &c.,  
Appellant,  
v.  
Roni Smith,  
Respondent.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the respondent on the appeal herein.

Mo. No. 2016-262  
The People &c.,  
Respondent,  
v.  
Theodore Jerome Smith, Jr.,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

1 Mo. No. 2016-295  
The People &c.,  
Respondent,  
v.  
Darrell Spencer,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2016-11  
SS Marks LLC,  
Appellant,  
v.  
Morrison Cohen LLP, et al.,  
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2016-153  
The People &c.,  
Respondent,  
v.  
Harvert Stephens, also known as  
Havert Stephens,  
Appellant.

Motion by City of Syracuse for leave to appear amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

1                    Mo. No. 2015-1227  
United States Fire Insurance Company,  
Respondent,  
v.  
Nine Thirty FEF Investments, LLC, et al.,  
Appellants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Abdus-Salaam took no part.

1                    Mo. No. 2016-298  
The People &c.,  
Respondent,  
v.  
Jose Valentin,  
Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2016-284  
The People &c.,  
Respondent,  
v.  
Dennis Watkins,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.