

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

Andres Pimentel, as Administrator
for the Estate of Beatrice Arias,
and Andres Pimenel, Individually,

Plaintiffs-Respondents,

-against-

Isabella Home, et al.,

Defendants-Appellants.

-----X

M-4559

M-5127X

Index No. 114280/07

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about August 9, 2011,

And defendants-appellants having moved for an enlargement of time to perfect the aforesaid appeal,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" October 25, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn and accordingly the motion (M-4559) is deemed withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David Friedman, Justices.

-----X
John Whitfield,
Plaintiff,

-against-

M-259
Index No. 400178/12

The City of New York, et al.,
Defendants.

-----X

Plaintiff having moved pro se for leave to appeal to this Court from the order of the Supreme Court, New York County, entered on or about March 22, 2012, and for leave to prosecute, as a poor person, said appeal, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to the motion and the correspondence from plaintiff, dated January 19, 2013, and due deliberation having been had thereon,

It is ordered that the motion and the appeal are deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

Carolyn Le Bel, as Executrix of the Estate of Marya Lenn Yee,

Plaintiff-Respondent,

-against-

M-399X

Index No. 652200/10

Mary A. Donovan and Donovan & Yee, LLP,

Defendants-Appellants.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 1, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" January 23, 2013, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X
Maria K. Modlin, as Trustee for
The Maria K. Modlin Revocable Trust,
Plaintiff-Appellant,

-against-

Ronald Lee Kantowitz,
Defendant-Respondent.

M-452X
Index No. 651654/10

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about August 28, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" January 24, 2013, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

Marine Midland Bank, N.A.,
Plaintiff-Respondent,

Action No. 1

-against-

M-453X

Index No. 27449/92

Richard F. Koch and Richard F. Koch,
doing business as Koch Realty, Co.,
Defendants-Appellants.

-----X

64 W. 44th Street Associates, as
Assignee of Marine Midland Bank, N.A.,
Petitioner-Respondent,

Action No. 2

-against-

Index No. 651602/11

Richard F. Koch and Richard F. Koch,
doing business as Koch Realty, Co.,
Helen Elkin, and Robert Elkin,
Respondents-Appellants,

Roscioli Yachting Center, Inc., et al.,
Respondents.

-----X

An appeal having been taken by defendants-appellants, Richard F. Koch and Richard F. Koch, doing business as Koch Realty, Co., and by respondents-appellants, Richard F. Koch and Richard F. Coch, doing business as Koch Realty Co., Helen Elkin, and Robert Elkin, from the judgment of the Supreme Court, New York County entered on or about September 12, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" January 24, 2013, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X
Seanet Technologies, Inc.,
Plaintiff-Appellant,

Action No. 1

-against-

M-461X

Index No. 650967/11

Eyal Yardeni,
Defendant-Respondent.

-----X
Eyal Yardeni,
Counterclaim Plaintiff-Respondent,

Action No. 2

-against-

Index No. 650967/11

Bernie Davidovics, Seanet Technologies,
Inc.,
Counterclaim Defendants-Appellants.

-----X

An appeal having been taken by plaintiff/counterclaim defendant-appellant, Seanet Technologies, Inc., and by counter-claim defendant-appellant, Bernie Davidovics, from an order of the Supreme Court, New York County, entered on or about May 2, 2012 (Action No. 2); and an appeal having been taken by defendant/counterclaim plaintiff-appellant, Eyal Yardeni, from an order of the same Court entered on or about September 26, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" January 25, 2013, and due deliberation having been had thereon,

It is ordered that the appeals are withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X
VNB New York Corp.,

Plaintiff Judgment Creditor-
Respondent,

-against-

M-4973X
Index No. 602992/09

Jeffrey Wasserman,

Defendant Judgment Debtor,

P&J Property Enterprises LLC,

Defendant Intervenor-Appellant.
-----X

An appeal having been taken from orders of the Supreme Court, New York County, entered on or about January 11, 2012 (mot. seq. no. 005) and April 12, 2012, respectively,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" October 22, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

Yin King Leung,

Plaintiff-Respondent,

-against-

Alex Chi Chan,

Defendant-Appellant.

-----X

M-4983X
Index No. 305729/09

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about March 27, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" October 19, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X
Lower Manhattan Dialysis Center, Inc.,
et al.,
Plaintiffs-Respondents,

-against-

M-4999X

Index No. 602547/07

John P. Lantz, M.D. and Marie Lantz,
Defendants-Appellants.

-----X
Estate of John P. Lantz, M.D. and
Marie Lantz,
Counterclaim Plaintiffs-Appellants,

-against-

Lower Manhattan Dialysis Center, Inc.,
et al.,
Counterclaim Defendants-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about April 17, 2012 (mot. seq. no. 003),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" October 22, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

Cornerstone Research, Inc.,

Plaintiff-Appellant,

-against-

Sheldon Gordon, et al.,

Defendants-Respondents.

-----X

M-5332X
Index No. 650556/11

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about April 26, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" November 13, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

The Drummers Collective, Inc.,

Plaintiff-Appellant,

M-5345X

Index No. 653437/11

-against-

Wasserstein Enterprises, Inc.,

Defendant-Respondent.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about February 28, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" November 14, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David Friedman, Justices.

-----X

Spencer Holover,

Plaintiff-Respondent,

M-5343X

Index No. 104012/10

-against-

377 East 33rd Fee LLC, et al.,

Defendants-Appellants.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about July 10, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" November 14, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David Friedman, Justices.

-----X

George Karfunkel,

Plaintiff-Respondent,

-against-

Philip S. Sassower,

Defendant-Appellant.

-----X

M-5367X

Index No. 602244/09

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about January 30, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" November 15, 2013, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David Friedman, Justices.

-----X

Tammy Gaillard,

Plaintiff-Appellant,

-against-

M-5589X

Index No. 304749/10

Columbia University Medical Center,
New York-Presbyterian Hospital,

Defendant-Respondent.

-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about August 3, 2012,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" November 28, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David Friedman
Rolando T. Acosta
David B. Saxe, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Lawrence Francis,
Defendant-Appellant.

M-5755
Ind. Nos. 3413/11
3629/11

-----X

Defendant having moved for an extension of time in which to file notices of appeal from judgments of the Supreme Court, Bronx County, both rendered on or about October 2, 2012, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers as a timely filed notice of appeal with respect to the aforesaid judgments and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David Friedman
Rolando T. Acosta
David B. Saxe, Justices.

-----X
The People of the State of New York,

Respondent,

-against-

M-5756

SCI No. 3342/10

Nick Alverado,

Defendant-Appellant.
-----X

Defendant having moved for an enlargement of time to file a notice of appeal from a judgment of the Supreme Court, Bronx County, rendered on or about October 4, 2012,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Rolando T. Acosta
David B. Saxe, Justices.

-----X
In re 155 West 21st Street, LLC, et al.,
Petitioners-Respondents,

-against-

M-5139
Index No. 109627/06

Alasdair McMullan,
Respondent-Appellant,

Extell 21st Street, LLC,
Respondent.

-----X

Respondent-appellant having moved for renewal of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 16, 2009 (Appeal No. 4493N),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Dianne T. Renwick
Sallie Manzanet-Daniels, Justices.

-----X
The Board of Managers of Parc
Vendome Condominium,
Petitioner-Appellant,

-against-

M-5937
Index No. 109008/10

George Cambourakis, et al.,
Respondents,

Bright Horizons Family Solutions LLC,
Respondent-Respondent.
-----X

Petitioner-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on October 16, 2012 (Appeal No. 8300N),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzairelli
Richard T. Andrias
Leland G. DeGrasse
Nelson S. Román, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

James Brown,
Defendant-Appellant.

M-4325
Ind. Nos. 6292/06
1957/07

-----X

An appeal having been taken to this Court from the judgment of the Supreme Court, New York County, rendered on or about September 12, 2008,

And defendant-appellant having moved, through retained counsel, for an order relieving Robert S. Dean, Esq., Center for Appellate Litigation, as assigned counsel on the aforesaid appeal, to substitute retained counsel Robert DiDio, Esq., as counsel on the aforesaid appeal, to deem the oversized brief submitted by assigned counsel withdrawn, and for an enlargement of time to perfect the appeal,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of (1) relieving assigned counsel Robert S. Dean, Esq., Center for Appellate Litigation, as counsel on the appeal; (2) deeming the brief submitted by assigned counsel withdrawn and striking the appeal from this Court's April 2013 Term calendar and (3) enlarging the time to re-perfect the appeal to on or before July 8, 2013 for the September 2013 Term, without prejudice to a request to file an oversized brief, if so advised. The poor person relief previously granted in the order of this Court entered on December 2, 2008 (M-5104) is otherwise continued. The motion, to the extent it seeks to assign retained counsel on the appeal, is denied as unnecessary.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
Rolando T. Acosta
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
The People of the State of New York,

-against-

M-5983
Ind. No. 1019/04

Jeidy Rodriguez,
Defendant.

-----X

A judgment of the Supreme Court, New York County (William Wetzel, J.), having been rendered on or about July 19, 2004,

And retained counsel Paul B. Grotas, Esq., having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of counsel with respect to the aforesaid judgment, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
Helen E. Freedman
Judith J. Gische, Justices.

-----X
Robin Windham,

Plaintiff-Appellant,

Kimberly Windham, Cheryl Harper
and Chandler Windham,

Plaintiffs-Appellants,

-against-

The New York City Transit Authority,
et al.,

Defendants-Respondents.

M-5392
M-5499
Index No. 23297/05

-----X

Appeals having been taken by plaintiff-appellant, Robin Windham, from orders of the Supreme Court, Bronx County, entered on or about January 31, 2012 and on or about October 12, 2012, respectively, and appeals having been taken by plaintiffs-appellants, Kimberly Windham, Cheryl Harper and Chandler Windham, from the same orders of said Court,

And plaintiff-appellant, Robin Windham, having moved for an order enlarging the time to perfect her appeal from the order entered on or about January 31, 2012 (M-5392),

And plaintiffs-appellants, Kimberly Windham, Cheryl Harper and Chandler Windham, having moved for the same relief (M-5499),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are granted to the extent of enlarging the time to perfect plaintiffs' respective appeals from the order entered on or about January 31, 2012 to the September 2013 Term. Sua sponte, the appeals taken by the respective plaintiffs are consolidated and plaintiffs are directed to file 9 copies of one joint record on appeal with plaintiff-appellant Robin Windham and plaintiffs-appellants Kimberly Windham, et al., each filing one set of appellants points pertaining to their respective appeals, and each paying half the cost of preparation of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Rolando T. Acosta
Leland G. DeGrasse
Rosalyn H. Richter, Justices.

-----X
In re American Transit Insurance Company,
Petitioner-Respondent,

-against-

M-5748
Index No. 113263/10

Mohammad S. Hossain,
Respondent,

State Farm Automobile Ins. Co.,
Proposed Additional Respondent-Appellant,

Stokely Braithwaite,
Proposed Additional Respondent.

-----X

Proposed additional respondent-appellant having moved for reargument and or modification of the decision and order of this Court entered on November 8, 2012 (Appeal No. 8440),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Rosalyn H. Richter
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----X
Bldg Management Co., Inc.,
Petitioner-Landlord-Appellant,

-against-

M-4998
Index No. 570970/11

Jacqueline Carleton,
Respondent-Tenant-Respondent.

-----X

Petitioner-landlord-appellant having moved for leave to appeal to this Court from the decision and order of the Appellate Term, entered in the office of the Clerk of the Supreme Court, New York County on or about March 15, 2012,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Rosalyn H. Richter
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----X

Charles Raffa, Jr.,
Plaintiff-Appellant,

-against-

M-5949
Index No. 305790/09

The City of New York,
Defendant-Respondent,

U.R.S. Corporation, et al.,
Defendants.

-----X

Defendant-respondent having moved for reargument of the decision and order of this Court entered on November 27, 2012 (Appeal No. 8627),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Peter Tom, Justice Presiding,
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels
Darcel D. Clark, Justices.

-----X
S Zeng, as Guardian of Jane Doe,
Plaintiffs-Respondents,

-against-

M-244

Index No. 104180/11

The New York and Presbyterian Hospital,
et al.,
Defendants,

Steven Y. Tennenbaum, M.D.,
Defendant-Appellant.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about May 10, 2012 (mot. seq. no. 002),

And defendant-appellant having moved to withdraw the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties hereto, dated November 26, 2012, and due deliberation having been had thereon,

It is ordered that the appeal is deemed withdrawn.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Peter Tom, Justice Presiding,
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels
Darcel D. Clark, Justices.

-----X
Douglas Flynn,

Plaintiff-Appellant-Respondent,

M-138

Index No. 107370/09

-against-

835 6th Avenue Master L.P., care of
J.D. Carlisle Development Corp., and
M.D. Carlisle Development Corp.,

Defendants-Respondents-Appellants.

-----X
(And third-party actions)

An appeal and cross appeal having been taken from an order of the Supreme Court, New York County, entered on or about July 3, 2012, and plaintiff's direct appeal having been perfected,

And the "Carlisle" defendants-respondents-appellants having moved for an enlargement of time to submit a respondents' brief and to perfect their cross appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of adjourning the appeal and cross appeal to the June 2013 Term, and "Carlisle" defendants are directed to follow said Term's filing deadlines for their respondents' brief(s). Briefs filed by third-party defendants-respondents-respondents, Century-Maxim Construction Corp. and Rebar Lathing Corp., are deemed withdrawn, with leave to re-file new briefs for said June 2013 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Peter Tom, Justice Presiding,
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels
Darcel D. Clark, Justices.

-----X
In the Matter of the Application of
Mary Ginther,
Petitioner-Appellant,

M-258

For a Judgment Pursuant to Article 78 Index No. 112272/11
of the Civil Practice Law and Rules,

-against-

Raymond Kelly, as Police Commissioner
of the City of New York, et al.,
Respondents-Respondents.

-----X

Petitioner-appellant having moved for an enlargement of time to perfect the appeal taken from an order of the Supreme Court, New York County, entered on or about April 20, 2012,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time to perfect the appeal to the September 2013 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
John W. Sweeny, Jr.
Karla Moskowitz
Dianne T. Renwick, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5836
Ind. No. 601/11

Martin Bonola,
Defendant-Appellant.

-----X

Assigned counsel having moved for an order dismissing defendant's appeal from the judgment of the Supreme Court, New York County, rendered on or about August 25, 2011, without prejudice to reinstatement at such time appellant again becomes amenable to the jurisdiction of this Court,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the appeal withdrawn.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
John W. Sweeny, Jr.
Karla Moskowitz
Dianne T. Renwick, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5792
Ind. No. 1616/05

Warren Taylor,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of **resentence** of the Supreme Court, New York County, entered on or about November 30, 2012, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of **resentence**. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Leland G. DeGrasse
Rosalyn H. Richter
Darcel D. Clark, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5645
Ind. No. 964/12

Tony Shaw,
Defendant-Appellant.

-----X

Defendant having renewed his motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about April 5, 2012, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files reproduced copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
John W. Sweeny, Jr.
Karla Moskowitz
Dianne T. Renwick, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5806

Ind. No. 6110/11

Roger Collado,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about October 15, 2012, for leave to prosecute the appeal as a poor person, on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted only to the extent of deeming the moving papers a timely filed notice of appeal.

The motion, to the extent that it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, pursuant to CPLR 1101(a), setting forth the amount and sources of funds to post the \$3,500 bail in the Supreme Court, the disposition thereof, and an explanation as to why similar funds are not available to prosecute this appeal. (The application shall include an affidavit of the source[s] of all funds utilized by defendant.)

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
John W. Sweeny, Jr.
Karla Moskowitz
Dianne T. Renwick, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5813
Ind. No. 8230/99

Lerone Grant,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of **resentence** of the Supreme Court, New York County, rendered on or about September 11, 2012, and for leave to prosecute the appeal as a poor person, upon the original record and upon a reproduced appellant's brief, and for assignment of counsel,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted only to the extent of deeming the notice of appeal timely filed.

The motion, insofar as it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the appeal.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
David Friedman
Sallie Manzanet-Daniels
Nelson S. Román
Darcel D. Clark, Justices.

-----X
The People of the State of New York,
Appellant,

-against-

M-205
SCI No. 76529C/10

Zaida Hernandez,
Defendant-Respondent.

-----X

Defendant-respondent having moved for leave to respond, as a poor person, to the People's appeal from an order of the Supreme Court, Bronx County, entered on or about April 27, 2012, and for assignment of Richard M. Greenberg, Esq., as counsel in connection with the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of (1) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for the People and 10 copies thereof are filed with this Court, and (2) assigning, pursuant to Section 722 of the County Law, Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York, 10007, Telephone No. 212-402-4100, as counsel for purposes of responding to the appeal.

It is further ordered that the appeal is adjourned to the September 2013 Term.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
David Friedman
Sallie Manzanet-Daniels
Darcel D. Clark, Justices.

-----X
Dr. Andrea Parris,

Petitioner-Respondent,

M-14

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No. 102401/12

-against-

The New York City Department of
Education and Gale Reeves,

Respondents-Appellants.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about November 15, 2012,

And petitioner having moved for relief in the nature of vacatur of the automatic stay provisions of CPLR 5519(a)(1),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Dianne T. Renwick
Rosalyn H. Richter
Darcel D. Clark, Justices.

-----x

Hamilton Heights Funding, LLC, as assignee of People's United Bank, as successor by merger to Bank of Smithtown,

Plaintiff-Respondent,

-against-

M-5883

M-5999

Index No. 117868/09

145 West 150 LLC, et al.,
Defendants-Appellants,

State of New York Department of Taxation and Finance, et al.,
Defendants.

- - - - -

Martin Weise,
Non-Party Movant.

-----x

An appeal having been taken to this Court from an order and judgment (one paper) of the Supreme Court, New York County, entered on or about September 5, 2012,

And defendant-appellant David Diamond and non-party movant Martin Weise having moved for a stay of enforcement of the order pending hearing and determination of the appeal, and for other relief (M-5883),

And Sally E. Unger, Esq., court appointed counsel for the receiver Miriam Breier with respect to the premises located at 415 West 150th Street, New York, New York, having cross-moved for an order dismissing the appeal as untimely taken, or for alternative relief (M-5999),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are denied, and the interim relief granted by the order of a Justice of this Court dated December 17, 2012, is hereby vacated.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Leland G. DeGrasse
Helen E. Freedman
Rosalynd H. Richter, Justices.

-----X
Ralph Brannon,
Plaintiff-Appellant,

-against-

M-5714
Index No. 112004/09

Maura McHugh Joseph Mills, et al.,
Defendants,

-and-

The Civil Service Commission of the
City of New York,
Defendant-Respondent.

-----X

Defendants having moved to dismiss the appeal from the order of the Supreme Court, New York County, entered on or about November 18, 2011, for failure to timely perfect,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
Dianne T. Renwick
Leland G. DeGrasse
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-5791
Ind. No. 1427/11

William Bryant,
Defendant-Appellant.

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from a judgment of **resentence** of the Supreme Court, New York County, rendered on or about May 2, 2012, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of **resentence**. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Leland G. DeGrasse
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----x
Stylesight, Inc.,

Plaintiff,

-against-

Susan Childs,

Defendant.
-----x

M-278
Index No. 150144/13

Defendant having moved, pursuant to CPLR 5704(a), for a "stay" of a temporary restraining order issued by a Justice of the Supreme Court, New York County, on or about January 8, 2013, or for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted only to the extent of continuing the interim relief granted by order of a Justice of this Court dated January 16, 2013 pending and without prejudice to any further relief granted or to be granted by the aforesaid Justice of the Supreme Court, and the motion is otherwise denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Leland G. DeGrasse
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----x
Southern Wine & Spirits of America,
Inc., et al.,
Plaintiffs-Respondents-Appellants,

-against-

M-362
Index No. 650083/10

Impact Environmental Engineering,
PLLC, et al.,
Defendants-Appellants-Respondents.

-----x

An appeal and cross appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about April 11, 2012, and said appeal and cross appeal having been perfected,

And defendants-appellants-respondents having moved for a stay of all discovery pending hearing and determination of the appeal and cross appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Leland G. DeGrasse
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----X
Mt. McKinley Insurance Company, formerly
known as Gibraltar Casualty Company,
et al.,

Plaintiffs-Respondents,

-against-

Corning Incorporated,
Defendant-Appellant,

AIU Insurance Company, et al.,
Defendants-Respondents.

SEALED

M-520

Index No. 602454/02

-----X

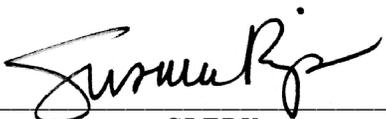
An appeal having been taken from an order and judgment (one paper) of the Supreme Court, New York County, entered on or about September 7, 2012 (mot. seq. nos. 98-110, 112-117), and said appeal having been perfected,

And defendant-appellant having moved for an order (1) permitting it to delete four sentences from its opening brief by affixing white tape over those sentences in the copies of the brief filed with this Court, and electronically filing the opening brief with the four sentences deleted, and (2) maintaining the briefing schedule as set forth in the order of a Justice of this Court dated December 6, 2012,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Leland G. DeGrasse
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----x
Gilbert Hendricks,
Plaintiff-Respondent-Appellant,

-against-

CAD Architechtural Metals and Glass, M-591
Inc., et al., Index No. 309385/08
Defendants-Appellants-Respondents,

-and-

Rhoda Platt,
Defendant/Cross-Respondent.

-----x

An appeal and cross appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about April 17, 2012,

And plaintiff-respondent-appellant having moved for an enlargement of time to perfect the direct appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time to perfect the appeal and cross appeal to the June 2013 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. Richard T. Andrias, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Paul G. Feinman
Judith J. Gische, Justices.

-----X
Bruno Maschi, as Administrator
of the Estate of Anthony Maschi,
Deceased,
Plaintiff-Appellant,

M-5979
Index No. 102996/09

-against-

The City of New York, et al.,
Respondents-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about March 20, 2012, and said appeal having been perfected,

And plaintiff-appellant having moved for a stay of trial pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Judith J. Gische, Justices.

-----X
Bonnie Watkins and Sam Watkins,
Plaintiffs-Respondents,

-against-

M-5969
Index No. 150201/08

City of New York,
Defendant-Respondent,

1009 5th Avenue LLC.,
Defendant-Appellant.
-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about August 24, 2012,

And defendant-appellant having moved to enlarge the record on appeal to include the complete version of a certain deposition transcript,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted without prejudice to arguments on appeal as to the weight given to those portions of the transcript which were inadvertently omitted before the trial court.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Richard T. Andrias, Justice Presiding,
Dianne T. Renwick
Helen E. Freedman
Judith J. Gische, Justices.

-----X
The People of the State of New York,

Respondent,

-against-

M-220
Ind. No. 2291/10

Ariel Wilson,

Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to file a pro se supplemental brief in connection with the appeal from a judgment of the Supreme Court, New York County, rendered on or about January 24, 2011,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Rolando T. Acosta
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

-----X
In the Matter of

Annyika B. and Trey C.,

Children Under the Age of 18 Years
Alleged to be Abused and/or Neglected
Under Article 10 of the Family Court
Act.

M-5515
Docket Nos. N30319/11
N30320/11

- - - - -
Administration for Children's
Services,
Petitioner-Respondent,

Amber C.,
Respondent-Appellant.

- - - - -
Keith Brown, Esq.,
Attorney for the Child Annyika B.,

- - - - -
Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Attorney for the Child Trey C.

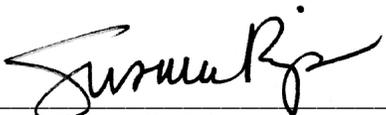
-----X

Respondent-appellant mother having moved for leave to prosecute, as a poor person, appeals from orders of fact-finding and orders of disposition (under each of the above-listed docket numbers), of the Family Court, Bronx County, entered on or about October 18, 2012, for assignment of counsel, a free copy of the transcript(s), and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Andrew Baer, Esq., 299 Broadway, Suite 1415, New York, NY 10007, Telephone No. (212) 233-0318, as counsel for purposes of prosecuting the appeal(s); (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record(s) on appeal, the cost thereof to be charged against the City of New York from funds available therefor¹ **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect the appeal(s), in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTER:


CLERK

¹Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Helen E. Freedman
Nelson S. Román, Justices.

-----X
The People of the State of New York
ex rel. Selwin Wilkes,
Petitioner-Appellant,

-against-

Warden: Artemio Colon, M.D.C.,
Respondent-Respondent.

M-4627
Ind. Nos. 30112/12
401093/12

-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, entered on or about June 8, 2012, which dismissed a habeas corpus proceeding, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, for assignment of counsel, and for a writ of habeas corpus to be issued from this Court,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from Nicole A. Coviello, Assistant District Attorney of the County of New York dated December 12, 2012, and due deliberation having been had thereon,

It is ordered that the motion is denied, as moot.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Helen E. Freedman
Nelson S. Román, Justices.

-----x
In the Matter of the Paternity Proceeding
Under Article 6 of the Family Court Act.

Todd S.,
Petitioner-Respondent,

-against-

M-5893
M-171
Docket No. P-55964/09

Lauri B.,
Respondent-Appellant.

-----x
An appeal having been taken from the order of the Family Court, New York County, entered on or about June 8, 2011, and said appeal having been perfected,

And respondent-appellant having moved for leave to proceed pro se in connection with the aforesaid appeal (M-5893),

And former counsel for respondent-appellant, the Law Office of Jeremy D. Morley (Anne E. Glatz, of counsel), having moved to be relieved as counsel for respondent-appellant in connection with the aforesaid appeal (M-171),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are granted, and counsel for respondent-appellant is relieved. Sua sponte, the appeal is adjourned to the May 2013 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT - Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Helen E. Freedman
Nelson S. Román, Justices.

-----X

Aron Grinshpun, et al.,
Plaintiffs-Respondents,

-against-

M-6005
Index No. 115376/10

Gennady Borokhovich, etc.,
Defendant-Appellant,

Vitaly Zaretsky,
Defendant.

-----X

Defendant-appellant having moved for reargument of or, in the alternative, leave to appeal to the Court of Appeals from the decision and order of this Court entered on November 27, 2012 (Appeal Nos. 8504/8505/8506),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
David B. Saxe
Leland G. DeGrasse
Sheila Abdus-Salaam
Paul G. Feinman, Justices.

-----X
In the Matter of the Application of
Wendell Hauser,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78 M-5769
of the Civil Practice Law and Rules, Index No. 400084/12

-against-

New York City Housing Authority,
Respondent-Respondent.
-----X

An order of this Court having been entered on September 18, 2012 (M-3242) having granted petitioner-appellant leave to prosecute, as a poor person, the purported appeal from the order of the Supreme Court, New York County, entered on or about June 25, 2012, and leave to have the appeal heard on the original record and upon a reproduced appellant's brief,

And petitioner-appellant having moved for a stay of eviction and for leave to file a late notice of appeal,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon,

It is ordered that so much of the motion seeking leave to file a late notice of appeal is denied. The stay of eviction is denied as academic.

ENTER:



CLERK

SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT,

David B. Saxe, J.P.
Helen E. Freedman
Sallie Manzanet-Daniels
Judith J. Gische, JJ.

9012
M-5107
Ind. 4334/10

x

In re Jamal Morris,
Petitioner,

-against-

Hon. Leonard Livote, etc., et al.,
Respondents.

x

In this article 78 proceeding, petitioner seeks to prohibit respondents from retrying him under Bronx County Indictment Number 4334/10.

The Bronx Defenders, Bronx (V. Marika Meis, Adeola Ogunkeyede and John Vang of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York (Susan Anspach of counsel), for Hon. Leonard Livote, respondent.

Robert T. Johnson, District Attorney, Bronx (Tammy M. Vadasz and Breanne M. Smith of counsel), for Robert T. Johnson, respondent.

FREEDMAN, J.

In this CPLR article 78 proceeding, petitioner seeks a writ of prohibition barring respondents from retrying him on criminal charges after his first prosecution ended with the trial court declaring a mistrial on the People's motion and without petitioner's consent. We grant the application because there was no manifest necessity for a mistrial, and accordingly retrial is barred under the Double Jeopardy Clauses of the Federal and New York State Constitutions (US Const 5th Amend; NY Const, art I, § 6; see also *Matter of Enright v Siedlecki*, 59 NY2d 195, 199-201 [1983]).

In 2010, petitioner was charged with criminal sale of a controlled substance in the third degree and criminal sale of a controlled substance in or near school grounds. The case was tried in September 2012. Before jury selection, defense counsel moved in limine for, among other things, permission to cross-examine Detective Leslie Gauvin, the arresting police officer, about a federal civil lawsuit for false arrest that one Jesus Rosario had filed against him in 2007, which had been settled for \$25,000. The People then informed the court and the defense that it did not plan to call Detective Gauvin as a witness, and the court determined that the motion in limine was moot.

Defendant's trial commenced on September 24, 2012. The

prosecution first called Sergeant Edward Wynne, who supervised the undercover buy and bust operation. The Sergeant testified that he was stationed in a car with Detective Gauvin during the operation and saw an undercover officer interact with petitioner on the street. Thereafter, the officer radioed Sergeant Wynne and Detective Gauvin that he had purchased drugs from petitioner, whereupon the Sergeant and the Detective arrested petitioner. Sergeant Wynne also testified that he saw Detective Gauvin recover prerecorded "buy" money from petitioner's pocket.

After Sergeant Wynne completed his testimony and a New York Police Department criminalist testified that the substance sold to the undercover officer was cocaine, defense counsel then stated that, if the People did not call Detective Gauvin, counsel would request that the court give a missing witness instruction to the jury. After the court agreed to give the charge, the prosecution indicated that it was reconsidering whether to call Detective Gauvin and asked for a ruling on defendant's motion in limine. The court ruled that the monetary settlement of the civil suit provided a good faith basis for defense counsel to question the Detective about his alleged bad acts and that he was "free to answer yes or no as to whether he did any of the particular things alleged." The court ruled, however, that it would not allow defense counsel to introduce any collateral

evidence of the allegations.

The day concluded with the testimony of another participant in the undercover operation who followed the undercover buyer on the street and also observed his interaction with petitioner. On the next day of trial, the People called Detective Gauvin. On direct examination, the Detective testified that he could not remember anything about the circumstances surrounding petitioner's arrest except that he had assisted in the incident.

On cross-examination, defense counsel asked Detective Gauvin whether it was true that in September 2007 one Jesus Rosario had filed a civil rights lawsuit against him in federal court. Before the witness answered, the People objected and counsel approached the bench. Thereafter, the judge stated on the record that, at the sidebar conference, he had instructed defense counsel that while he could ask Detective Gauvin about the alleged bad acts that gave rise to the lawsuit, counsel could not ask the Detective about the lawsuit itself or the settlement.

After the conference, the court reminded the jury that defense counsel's question did not constitute evidence. Next, defense counsel asked Detective Gauvin whether Rosario had accused him of false arrest and imprisonment. The People objected but the court overruled the objection. The Detective admitted that Rosario had claimed false arrest but denied that he

had claimed false imprisonment.

Defense counsel then asked Detective Gauvin, "Is it true in 2007, . . . Jesus Rosario sued you?" The People objected and asked for another curative instruction. The court sustained the objection and again instructed the jury that "[q]uestions are not evidence." Defense counsel next asked the witness whether he had fabricated evidence in connection with Rosario's arrest. After the court overruled the People's objection, Detective Gauvin answered "no." Finally, defense counsel asked, "Is it true that . . . this litigation . . . was settled for \$25,000?" The People objected and, after the court sustained the objection, asked to allow counsel to approach.

After an off-the-record discussion, the People requested that the court declare a mistrial because defense counsel had "flagrantly disregarded" the court's ruling about the scope of cross-examination and "tried to taint the jury with respect to [Detective Gauvin]" by asking about the federal lawsuit and the settlement. Defense counsel objected, arguing that there was no "manifest necessity" for a mistrial because the court could remedy any prejudice to the People by less extreme means. Counsel also claimed that any prejudice to the prosecution was minimal because Detective Gauvin was a non-material witness who could not remember anything about petitioner's arrest. Defense

counsel suggested that, before declaring a mistrial, the court could poll the jurors as to whether they could be fair and impartial.

The court granted the People's motion and declared a mistrial. Finding that defense counsel had intentionally ignored its directions, the court stated that the jurors would have to perform "mental gymnastics" to disregard counsel's references to the federal lawsuit and the monetary settlement. The court refused to poll the jurors, stating that "there isn't any remedy short of a mistrial that would cure the blatant, intentional misconduct."

The State is prohibited from prosecuting a defendant twice for the same offense (US Const 5th Amend; NY Const, art I, § 6). When the court declares a mistrial on the prosecution's motion and over the defendant's objection, a retrial is precluded unless "there is a manifest necessity for [the mistrial], or the ends of public justice would otherwise be defeated" (*United States v Perez*, 22 US 579, 580 [1824]; see also *People v Michael*, 48 NY2d 1, 9 [1979]). While deference is accorded to the trial court's decision to declare a mistrial, the court's discretion is not unlimited (*Matter of Enright*, 59 NY2d at 200; *Matter of Zeigler v Morgenthau*, 99 AD2d 989, 991 [1st Dept 1984, Alexander, J., dissenting], *revd on dissent* 64 NY2d 932 [1985]). The trial

court must "properly explore[] the appropriate alternatives" and there must be "a sufficient basis in the record for a mistrial" (*Hall v Potoker*, 49 NY2d 501, 505 [1980]).

Where, as happened here, the People move for a mistrial because of defense counsel's improper questioning of a witness or statements before the jury, such misconduct does not manifestly necessitate a mistrial unless counsel's misconduct was egregious and substantially and irreparably prejudiced the People's case (see *Matter of Rubinfeld v Appelman*, 230 AD2d 911 [2d Dept 1996] [where defense counsel disregarded the court's instructions during summation, interrupted the court, and displayed "[an] argumentative manner" and "overzealous advocacy," court abused its discretion by declaring mistrial and People failed to meet "their burden of demonstrating that . . . a mistrial was manifestly necessary"]; see also CPL 280.10[2]).

Although defense counsel's disregard of the court's instructions was blameworthy and understandably angered the court, the cross-examination did not rise to the level of the gross misconduct displayed in cases in which retrial was permitted (see *People v Hernandez*, 46 AD3d 1388 [4th Dept 2007], *lv denied* 10 NY3d 811 [2008]; *Matter of Maynard v Wait*, 246 AD2d 853 [3d Dept 1998]). Further, counsel's impropriety did not significantly prejudice the People because Detective Gauvin's

testimony was not material. He testified that he did not remember anything about the circumstances leading to petitioner's arrest after three other witnesses had identified petitioner as a drug dealer and described his alleged involvement in the drug transaction with the undercover officer. Finally, more specific curative instructions or a poll of the jurors to ascertain whether they could render an impartial verdict would have been appropriate here (*see Matter of Rubinfeld*, 230 AD2d at 912).

Accordingly, the petition for a writ of prohibition should be granted, without costs, respondents prohibited from reprosecuting petitioner for any crimes arising out of the acts underlying Bronx County Indictment No. 4334-10, and the indictment dismissed.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 21, 2013


CLERK

PM ORDERS
ENTERED ON
FEBRUARY 21,
2013

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 21, 2013.

Present - Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

-----x
Latoya Verdejo,

Plaintiff-Respondent,

-against-

New York City Housing Authority,

Defendant-Appellant.
-----x

M-565
Index No. 301037/08

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about August 6, 2012, and said appeal having been perfected,

And defendant-appellant having moved for a stay of trial pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted.

ENTER:


CLERK