

THE FOLLOWING MOTION ORDERS  
WERE ENTERED AND FILED ON  
DECEMBER 23, 2008

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

M-5709X Belfer v Church

M-5710X Alvarez v Diaz

M-5711X Eng v Eng

M-5712X Khan v Newman

M-5730X McComber v W2001Z/15CPW Realty, LLC

M-5731X Avenue of the Americas Deli Corp. v Manikis  
Appeals withdrawn.

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

M-5537 People v Burciaga, Nora

M-5538 People v Edwards, William

M-5557 People v Graham, Daniel

M-5548 People v Heyward, Terrence

M-5556 People v J., Jassan

M-5559 People v Jenkins, Gerard

M-5542 People v Jones, Randell

Leave to prosecute appeals as poor persons granted, as indicated.

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

M-5544 People v Roman, Jose

M-5565 People v Shepard, Dave

M-5545 People v Simmons, Curtis

M-5546 People v Williams, Javaar

Leave to prosecute appeals as poor persons granted, as indicated.

Lippman, P.J., Andrias, Friedman, Renwick, DeGrasse, JJ.

M-2701 People v Brown, Milton

Notice of appeal deemed timely filed; leave to prosecute appeal as a poor person granted, as indicated.

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

M-5635 Almonte v 38 Holding Corporation

CPLR 5704(a) relief denied.

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

M-5419 Alder v Janay

Motion and appeal deemed withdrawn, as indicated.

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

M-5446 Chenkin v New York City Council

Time to perfect appeal enlarged to the September 2009 Term.

Lippman, P.J., Mazzarelli, Saxe, Williams, Buckley, JJ.

M-5459 Gletzer v Harris - Greenpoint Mortgage Funding, Inc.

Resettlement granted to extent of issuing corrected opinion and order of this date.

Lippman, P.J., Mazzarelli, Buckley, McGuire, DeGrasse, JJ.

M-5145A (DC #49) People v Lopez, William

Upon the Court's own motion time to perfect appeal enlarged to the April 2009 Term, as directed. The order of this Court entered on December 11, 2008 (M-5145) recalled and vacated.

Lippman, P.J., Mazzarelli, Sweeny, DeGrasse, Freedman, JJ.

M-5582 Ringel v Rogosnitzky

Stay denied; interim relief granted by order of a Justice of this Court, dated November 20, 2008, vacated.

Lippman, P.J., Saxe, Friedman, Sweeny, Acosta, JJ.

M-5594 Glatzer v Bear, Stearns & Co., Inc.  
(And another action)

Time to perfect appeals enlarged to the May 2009 Term, as indicated; Clerk directed to calendar both appeals for hearing together in said Term.

Lippman, P.J., Gonzalez, Nardelli, Buckley, Acosta, JJ.

M-5396 Leon v St. Vincent De Paul Residence

Stay of trial denied.

Lippman, P.J., Gonzalez, Nardelli, Buckley, Acosta, JJ.

M-5728 In the Matter of C., Antonio

Time to perfect appeal enlarged to the April 2009 Term.

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

M-5346 Sorenson v Bridge Capital Corp.

Preliminary appellate injunction vacated, as indicated.

Tom, J.P., Saxe, Catterson, Moskowitz, DeGrasse, JJ.

M-5500 Gray v Public Employment Relations Board

Stay and related relief denied.

Tom, J.P., Friedman, Gonzalez, McGuire, Acosta, JJ.

M-5629 People ex rel. Rodriguez, Jose v Warden

Enlargement of record on appeal denied.

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

M-5349 Capogrosso v Kansas

Reargument denied.

Mazzarelli, J.P., Gonzalez, Catterson, McGuire, Acosta, JJ.

M-5518 People v Borreo, Albert

Leave to prosecute appeal as a poor person and related relief granted; Clerk of the Supreme Court shall expeditiously have made and filed with the criminal court two transcripts of the SORA hearing and other proceedings, as indicated.

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

M-5431 People v Bryant, Rickey

Leave to prosecute appeal as a poor person granted, as indicated.

Mazzarelli, J.P., Gonzalez, Catterson, McGuire, Acosta, JJ.

M-5499 People v Underwood, Terrance

Counsel substituted.

Mazzarelli, J.P., Andrias, Buckley, McGuire, JJ.

M-3436 Pludeman v Northern Leasing Systems, Inc.

Motion granted to the extent of directing plaintiffs to remit to defendants certain amounts, as indicated; motion otherwise denied.

All concur except McGuire, J., who concurs in part, and dissents in part as follows:

Defendants seek an order directing plaintiffs to pay for their share of the cost of preparing and reproducing the joint record on appeal before this Court. Specifically, defendants seek to require plaintiffs to pay half of that cost. For the reasons that follow, I disagree with the majority that plaintiffs should be required to do so. Plaintiffs commenced this action against defendants asserting causes of action for, among other things, fraud and breach of contract. Plaintiffs, who are small business owners, claim that they were fraudulently induced by

defendants to enter into onerous equipment leases. Plaintiffs also claim that defendants breached the leases by overcharging plaintiffs for certain services. Defendants moved to dismiss the complaint and Supreme Court dismissed certain causes of action, but denied those portions of the motion seeking dismissal of the fraud causes of action. On defendants' appeal and plaintiffs' cross appeal, we modified to the extent of reinstating the breach of contract claim as against the corporate defendant and otherwise affirmed (40 AD3d 366 [2007]). The Court of Appeals affirmed our order (10 NY3d 486 [2008]).

Defendants now seek an order directing plaintiffs to pay for their respective share of the cost of preparing the joint record on appeal filed with this Court. Defendants claim that they paid \$3,880.26 to prepare the joint record and that, despite several requests, plaintiffs have failed to pay defendants for their share of the cost, i.e., half of the total, or \$1,940.13. Defendants cite to a rule of this Court, 22 NYCRR 600.11(d)(1), which states that, where there is an appeal and a cross appeal, "[t]he parties shall consult and thereafter file a joint record or joint appendix which shall include therein a copy of the cross-notice of appeal. *The cost of the joint record or joint appendix and the transcript, if any, shall be borne equally among the parties*" (emphasis added).

Plaintiffs argue that this Court lacks jurisdiction over the parties because the appeal has already been decided; that the payment of their share of the cost must await the termination of the proceeding; that defendants did not consult with plaintiffs before preparing the joint record on appeal; and that the cost defendants incurred in preparing the record is "ridiculously inflated."

Initially, plaintiffs cite to no authority supporting their claim that this Court's jurisdiction over the parties terminated after we decided the appeal. Because the issue raised by this motion directly relates to the appeal and cross appeal that we decided, it follows that we have jurisdiction over the matter because, if we do not, it would follow either that no court has jurisdiction to resolve a dispute under 22 NYCRR 600.11(d)(1) or that a dispute under 22 NYCRR 600.11(d)(1) must be resolved by a plenary action.

Plaintiffs offer no support for their assertion that payment of their share of the cost must await the termination of the proceeding. Certainly nothing in § 600.11(d)(1) supports that assertion and this Court's sparse case law dealing with this rule indicates that a party's share of the cost is payable after the

appeal is decided but before the termination of the action (see *Greenwald v Trimfoot Co.*, 221 AD2d 245, 245 [1995] [upon affirming an order denying motions for summary judgment, we simultaneously granted plaintiff's motion to compel payment of one half the cost of printing the record]; see also *Silverstein v Castro*, 669 NYS2d 554 [1998]).

Plaintiffs assert that they were not consulted by defendants before they prepared the joint record on appeal, and that the printer defendants used charged far too much. Defendants do not dispute that they did not consult plaintiffs, and instead argue that consultation is not a precondition to the sharing of the cost under § 600.11(d).

The handful of this Court's cases addressing cost sharing under § 600.11(d)(1) all state in conclusory fashion that a party must pay half the cost of preparing a joint record on appeal (see *Mudge, Rose, Guthrie, Alexander & Ferdon v Penguin A.C. Corp.*, 221 AD2d 243, 243 [1995] ["Plaintiff's motion for an order pursuant to 22 NYCRR § 600.11(d) compelling defendant to share half the expense of the record on appeal is granted"]; *Greenwald*, 221 AD2d at 245 ["Motion by plaintiff to compel payment of one-half the costs of printing the record granted"]; *Blum v Warden*, 598 NYS2d 936 [1993] ["Defendants-appellants-respondents' motion to require plaintiffs to pay their share of the cost of the joint appendix and transcript in accordance with Rule 600.11(d) of this Court is granted, and plaintiffs-respondents-appellants' cross-motion for an order requiring the proportional allocation of the costs borne by the parties in producing the joint appendix and transcript is denied"]; see also *Silverstein v Castro*, *supra* ["Motion to dismiss appeal granted to the extent of directing plaintiff to comply with Rule 600.11(d)(1) within 10 days from the date of this order"]). No case law sheds any light on what we should do if one party asserts that they were not consulted prior to the preparation of the joint record.

Plaintiffs raise a valid argument that, under the regulation, defendants were required to consult with plaintiffs before preparing the joint record, and, at the very least, raise an issue of fact as to whether they were so consulted. I believe, however, that we can avoid a fact-finding procedure in this matter.

Plaintiffs merely assert in conclusory fashion that the total cost charged by the printer retained by defendants was unreasonably high. Thus, plaintiffs' counsel avers that \$3880.26, the cost charged by the printer, "is multiple times what, in my experience, the appellate costs should be. I have

handled several appeals, including some from summary judgments - but have never had a bill anywhere close to this amount, which I can only describe as ridiculously inflated." Obviously, this averment is short on specifics, and insufficient to raise an issue of fact as to the reasonableness of the bill generally.

Indeed, plaintiffs' only specific objection to the cost of preparing the record is that defendants unnecessarily included in the record copies of the leases in booklet form, each of which were encased in polythene cases and placed in pockets in the record. According to plaintiffs, the leases could have simply appeared in the pages of the record at much less cost.

In the interests of judicial economy and putting this matter to rest in a manner that eliminates the need for further litigation over a \$3880.26 printing bill, I believe the soundest disposition of this motion is to subtract from the printer's bill the cost (including applicable taxes) associated with preparing the booklets that plaintiffs object to -- \$257.40 to prepare the booklets, \$190 to fold and insert the booklets into the record and \$130 to make the pockets in the record to hold the booklets, for a total of \$577.40, plus applicable taxes of \$48.36 -- and require plaintiffs to pay half the remainder (i.e., \$3,254.50) of the bill. Of course, this resolution of the motion is overly generous to plaintiffs because, assuming that defendants had simply included the leases in the pages of the record, doing so would not have been free. However, what that marginal cost would have been cannot be determined on this record. As the saying goes, the game is not worth the candle.

Accordingly, I would grant defendants' motion to the extent of directing plaintiffs to pay defendants \$1,627.25. That the parties are incurring the costs of litigating this motion is remarkable. But our rule unequivocally requires consultation and plaintiffs should not be left without any remedy for defendants' failure to comply with this requirement. Without any explanation, the majority disregards that failure and divides the cost equally.

Mazzarelli, J.P., Gonzalez, Catterson, McGuire, Acosta, JJ.

M-5428

M-5520 Denenberg v Bankers Life of New York, also known as  
Bankers Life Insurance Company of New York

Time to perfect appeals and cross appeal enlarged to  
the June 2009 Term, as indicated.

Mazzarelli, J.P., Gonzalez, Catterson, McGuire, Acosta, JJ.

M-5527 Helgason v State of New York

Time to perfect appeal enlarged to the April 2009 Term.

Mazzarelli, J.P., Gonzalez, Catterson, McGuire, Acosta, JJ.

M-5558 Israel Discount Bank of New York v Timing Group, LLC

Time to perfect appeal enlarged to the April 2009 Term;  
motion otherwise denied, without prejudice to renewal, as  
indicated.

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

M-5434 Smith v The City of New York

Motion deemed one for reargument, and as such denied.

Andrias, J.P., Nardelli, Sweeny, DeGrasse, Freedman, JJ.

M-5474 Gattuso v New York City Transit Authority

Motion deemed withdrawn.

Saxe, J.P., Nardelli, Buckley, Moskowitz, Renwick, JJ.

M-5562 Schorr v Persuad

Stay granted on condition appeals perfected for the May 2009 Term, as indicated; Clerk directed to calendar said appeals for hearing on the same date.

Friedman, J.P., McGuire, Acosta, DeGrasse, Freedman, JJ.

M-5407 People v Tariq, Rashid

Counsel substituted.

Friedman, J.P., McGuire, Acosta, Freedman, JJ.

M-5738 Stevenson-Misischia v L'Isola D'Oro SRL

Motion granted to extent of striking plaintiff-appellant's brief with leave to re-perfect for the April 2009 Term, as indicated.

Friedman, J.P., McGuire, Acosta, DeGrasse, Freedman, JJ.

M-5401 In the Matter of Imperati v Kelly

Time to perfect appeal enlarged to the April 2009 Term.

Friedman, J.P., McGuire, Acosta, DeGrasse, Freedman, JJ.

M-5554 Hill v Coates

Time to perfect appeal enlarged to the April 2009 Term.

Gonzalez, J.

M-5352 People v Santiago, Benjamin

Leave to appeal to this Court granted, as indicated.

Moskowitz, J.

M-5736 People v Abney, Quentin

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

Acosta, J.

M-5355 People v DeJesus, Alexander

Leave to appeal to this Court denied.

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

M-5942 In the Matter of Marc S. Dreier  
(admitted as Marc Stuart Dreier),  
an attorney and counselor-at-law:

Respondent suspended from the practice of law in the State of New York, effective the date hereof, until such time as disciplinary matters pending before the Committee have been concluded and until further order of this Court. Opinion Per Curiam. All concur.

The following orders were entered and filed on December 18, 2008:

Lippman, P.J., Mazzairelli, Sweeny, DeGrasse, Freedman, JJ.

M-5612      Amsel v New York Convention Center Operating  
Corporation, also known as The Jacob K. Javitts  
Convention Center

Stay of trial granted.

Friedman, J.P., Sweeny, McGuire, Renwick, JJ.

M-5714      In re: New York City Asbestos Litigation - Estate of  
D'Ulisse v Amchem Products, Inc. - Chrysler, LLC,  
formerly known as Daimler Chrysler Corporation

Stay denied.