

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 December 29, 2009.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
John W. Sweeny, Jr.
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

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

-against-

M-5331
Index No. 062804/06

Sherry Bender,
Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to appeal to this Court from the orders on motion of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about January 29, 2009, and on or about October 21, 2009,

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:


DEPUTY CLERK
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 December 29, 2009.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
John W. Sweeny, Jr.
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----x
In the Matter of the Application of
Columbus/Amsterdam Associates,
Petitioner-Respondent,

-against-

M-5431
Index No. 55028/90

The Tax Commission of the City of New
York, et al.,
Respondents-Appellants.

-----x
Appeals having been taken to this Court from orders of the Supreme Court, New York County, entered on or about March 14, 2008 (mot. seq. no. 001) and November 16, 2009 (mot. seq. no. 002), respectively,

And respondents-appellants having moved for a declaration of a statutory stay pursuant to CPLR 5519(a)(1) or, in the alternative, for a discretionary stay pursuant to CPLR 5519(c), pending hearing and determination of the aforesaid appeals, 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 granting appellants a discretionary stay on condition the appeals, which are sua sponte consolidated, are perfected on or before February 22, 2010 for the May 2010 Term. Upon failure to so perfect, an order vacating the stay may be entered ex parte, provided petitioner-respondent serves a copy of this order upon respondents-appellants within 10 days after the date of entry hereof.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
John W. Sweeny, Jr.
James M. Catterson, Justices.

-----X
Franklin Balbuena,
Plaintiff-Respondent,

-against-

M-4709
Index No. 25168/04

New York Stock Exchange, Inc.,
Defendant-Appellant-Respondent,

Regional Scaffolding & Hoisting Co.,
Inc., et al.,
Defendants-Respondents-Appellants.

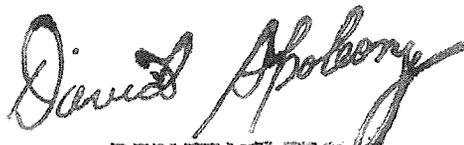
-----X

Defendant Regional Scaffolding & Hoisting Co., Inc. having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on November 1, 2007 (Appeal No. 1883),

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:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Rolando T. Acosta
Helen E. Freedman, Justices.

-----X
Darrell Felix,
Plaintiff-Appellant,

-against-

Sears, Roebuck and Co.,
Defendant-Respondent.

M-4818
Index No. 24031/05

-----X

Defendant Sears, Roebuck and Co. having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on July 28, 2009 (Appeal No. 173),

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:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
Karla Moskowitz
Dianne T. Renwick, Justices.

-----X
In re Kips Bay Towers Condominium, M-5339
Petitioner-Appellant, Index Nos. 200483/97
201069/98
200841/99
-against- 203376/00
201073/01
202423/02
The Commissioner of Finance, et al., 202599/03
Respondents-Respondents.
-----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 15, 2009 (Appeal No. 1174),

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:


DEPUTY 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 December 29, 2009.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. McGuire
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

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

-against-

M-5124
Ind. No. 1459/90

Khadijah Harley,
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 September 10, 2009, 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 his indigency and including the amount and sources of his income and listing his property with its value..

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Karla Moskowitz
Leland G. DeGrasse
Sallie Manzanet-Daniels
Nelson S. Roman, Justices.

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

-against-

M-5183
Ind. No. 4147/08

Jeffrey Capers,
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 March 20, 2009, 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 moving papers a timely filed notice of appeal.

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, including the amount and sources of his income and listing his property with its value.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. McGuire
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

-----X
Accounting of the Chase Manhattan Bank and Lawrence Kalik as Co-Trustees under the Trust Indenture of Louis Wagman, Grantor, dated August 3, 1977, Louis Wagman and Lawrence Kalik as Co-Trustees f/b/o Loretta Wagman. Surrogate's Court File No. 1121/86

-----X
Accounting of Carl Wagman as Co-Trustee under the Trust Indenture of Louis Wagman, Grantor, dated August 3, 1977, Louis Wagman and Lawrence Kalik as Co-Trustees f/b/o Loretta Wagman. M-5042

-----X
Loretta Wagman,
Plaintiff-Appellant,

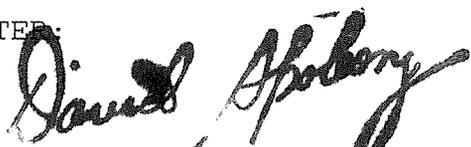
-against- Index No. 107856/98

Lawrence Kalik, etc., et al.,
Defendants-Respondents.
-----X

Carl Wagman having moved for an enlargement of time in which to perfect the appeal from the order of the Surrogate's Court, New York County, entered on or about January 2, 2009,

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 in which to perfect the appeal to the June 2010 Term.

ENTERED:

DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Richard T. Andrias
Eugene Nardelli, Justices.

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

-against-

M-1956
Ind. No. 4655/96

Alberto Pogo,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on March 8, 2001 (Appeal No. 3457), unanimously affirming a judgment of the Supreme Court, Bronx County (John Moore, J.), rendered on April 3, 1998,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, 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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Eugene Nardelli
Leland G. DeGrasse, Justices.

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

-against-

M-4348
Ind. No. 10809/94

Carmelo Monserate,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on December 1, 1998 (Appeal No. 2857), unanimously affirming a judgment of the Supreme Court, New York County (Mary Davis, J.), rendered on March 14, 1996,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, 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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzaelli
David B. Saxe
James M. Catterson, Justices.

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

-against-

M-4247
Ind. No. 4232/00

Corey Parks,
Defendant-Appellant.

-----X

A decision and order of this Court having been entered on November 1, 2005 (Appeal No. 6941), unanimously affirming a judgment of the Supreme Court, New York County (Leslie Crocker Snyder, J.), rendered on May 10, 2002,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, 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:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Amrik Hendiazad and New York Home
Furnishings & Rugs, Inc.,
Plaintiffs-Appellants,

M-5151
M-5233
M-5327

-against-

Index No. 116816/06

ACP Amsterdam Development, L.L.C.,
Sierra Realty Corp., Health Insurance
Plan of Greater New York, Beth Israel
Medical Center, The St. Luke's-
Roosevelt Hospital Center, Continuum
Health Partners, Inc.,
Defendants-Respondents.

-----X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about December 22, 2008 (mot. seq. no. 006),

And defendants-respondents ACP Amsterdam Development, L.L.C. and Sierra Realty Corp., having moved (M-5151) for dismissal of the aforesaid appeal upon plaintiff's failure to prosecute,

And defendant-respondent Health Insurance Plan of Greater New York having cross-moved (M-5233) for the same relief,

And defendant-respondent Continuum Health Partners, Inc., doing business as Beth Israel Medical Center and the St. Luke's Roosevelt Hospital Center having cross-moved (M-5327) for the aforesaid relief,

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

Ordered that the motion and cross motions are granted and the appeal is dismissed.

ENTER


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Rachel Sattler,
Plaintiff-Appellant,

-against-

M-5103
Index No. 118516/06

Zero Cab Corp. and Liberty Taxi Mgmt,
Inc. And Ashraf Henain,
Defendants-Respondents.

-----X

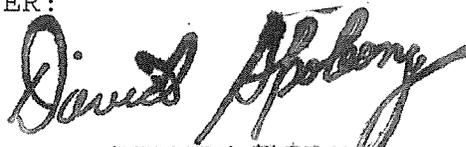
An appeal having been taken from an order of the Supreme Court, New York County, entered on or about January 15, 2009 (mot. seq. no. 004),

And defendants-respondents having moved for dismissal of the appeal upon appellant's 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:


DEPUTY CLERK
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 December 29, 2009.

Present: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

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

-against-

M-5245
Ind. No. 1004/07

Eric Harding,
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 June 5, 2008, 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, 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 10 reproduced copies of such brief, together with the original record, 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 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 M. 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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

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

-against- M-5244
Ind. No. 2501/08

Sean Green,
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 July 29, 2009, 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 ten reproduced copies of such brief, together with the original record, 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 any proceedings pursuant to CPL §210.20, Arts. 710 and 730, 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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Petition of
Michael Bifulco,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the CPLR,

M-5335
Index No. 102445/08

-against-

Raymond W. Kelly, etc., et al.,
Respondents-Respondents.

-----X
Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about January 15, 2009,

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 in which to perfect the appeal to the April 2010 Term.

ENTER:


Clerk
DEPUTY 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 December 29, 2009.

Present: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Mariusz Labecki,

Plaintiff-Appellant,

-against-

M-5292
Index No. 114347/06

West Side Equities, LLC, et al.,

Defendants-Respondents.
-----X

Appeals having been taken from the order of the Supreme Court, New York County, entered on or about February 11, 2009 (mot. seq. no. 001), and from the judgment of said Supreme Court, entered on or about June 1, 2009, and said appeals having been perfected,

And defendants-respondents having moved for an order dismissing plaintiff's appeals or, in the alternative, directing plaintiff to enlarge the record on appeal to include defendants' reply affirmation and the New York Workers' Compensation Board Notice of Approval - Section 32 Agreement, announcing the settlement of this matter in a decision dated November 6, 2009,

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 defendants to file a supplemental record on appeal which shall include the aforesaid New York Workers' Compensation Board Notice of Approval. The appeals are adjourned to the February 2010 Term, and the motion is otherwise denied.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Isaiah Rodriguez, an infant by his
mother and natural guardian Licha
Rosado,
Plaintiff-Respondent,

-against-

M-5354
Index No. 22047/06

New York City Health and Hospital
Corporation (Jacobi Medical Center),
Defendant-Appellant,

-and-

"John/Jane" Bernstein, M.D., "John/
Jane" B. Schwartz, M.D., and "John/
Jane" Kirschner, M.D.,
Defendants.

-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about January 8, 2009,

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 in which to perfect the appeal to the April 2010 Term.

ENTER:


DEPUTY 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 December 29, 2009.

Present - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----x
In the Matter of the Application of
The New York Foundation for Senior
Citizens, Guardian Services, Inc.,
Petitioner-Respondent,

-against-

M-5407
Index No. 400358/08

As Guardian for

Elizabeth B., An Alleged Incapacitated
Person,
Respondent-Appellant.

-----x

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about September 29, 2009,

And Marvin Bernstein, Mental Hygiene Legal Services, having moved on respondent-appellant's behalf for an order enlarging the record on appeal to include a letter from appellant's physician dated September 28, 2009 (Exhibit B to the moving papers),

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:


DEPUTY 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 December 29, 2009.

Present: Hon. Peter Tom, Justice Presiding,
David Friedman
Eugene Nardelli
Rosalyn H. Richter, Justices.

-----X
Janulyn McKanic,
Plaintiff-Appellant,

-against-

M-5322
Index No. 602360/05

Amigos Del Museo Del Barrio,
Defendant-Respondent.
-----X

An order of this Court having been entered on October 27, 2009 (M-4234), granting plaintiff a final enlargement of time in which to perfect the appeals taken from the orders of the Supreme Court, New York County, entered on or about November 24, 2008 (mot. seq. no. 007) and December 4, 2008, respectively, to the February 2010 Term,

And an order of this Court having been entered on November 5, 2009 (M-4571), inter alia, granting a further enlargement of time in which to perfect plaintiff's appeal taken from the order of said Supreme Court, entered on or about October 7, 2008 (mot. seq. no. 004), only to the extent of consolidating all of plaintiff's appeals for hearing during the February 2010 Term,

And plaintiff-appellant having moved for reconsideration of the prior orders of this Court entered on October 27, 2009 (M-4234) and on November 5, 2009 (M-4571), and for a further enlargement of time in which to perfect the consolidated appeals,

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 on condition that the consolidated appeals are perfected on or before February 1, 2010 for the April 2010 Term. Upon failure to so perfect, an order dismissing the consolidated appeals may be entered ex parte, provided that the respondent serves a copy of this order upon the appellant within 10 days after the date of entry hereof.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Peter Tom, Justice Presiding,
David Friedman
Eugene Nardelli
John T. Buckley
Rosalyn H. Richter, Justices.

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

-against-

M-5363
Ind. No. 4948/08

Charles Gilbert, also known as
Charles A. Gilbert,
Defendant-Appellant.

-----X

An appeal having been taken to this Court by defendant from a judgment of the Supreme Court, New York County, rendered on or about May 12, 2009,

And defendant having renewed his motion for leave to prosecute said appeal as a poor person, for the assignment of counsel, 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 denied, with leave to renew upon defendant's submission of a detailed 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, including the amount and sources of his income and listing his property with its value.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Peter Tom, Justice Presiding,
David Friedman
James M. Catterson
Karla Moskowitz
Rosalyn H. Richter, Justices.

-----X
XL Insurance America, Inc.,
Plaintiff-Respondent,

-against-

M-3457
Index No. 601852/07

Lumbermens Mutual Casualty Company,
Defendant-Appellant.
-----X

Plaintiff-respondent XL Insurance America, Inc. having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 23, 2009 (Appeal No. 873),

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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
Barton Mark Perl binder and
Stephen Perl binder,
Plaintiffs-Appellants,

-against-

Board of Managers of the 411
East 53rd Street Condominium,
Defendant-Respondent.
-----X

M-4394
Index No. 100974/08

Defendant-respondent having moved for reargument of the decision and order of this Court entered on September 29, 2009 (Appeal No. 700),

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:


DEPUTY CLERK
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 December 29, 2009.

PRESENT: Hon. Peter Tom, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman, Justices.

-----X
Eleanor Capogrosso,
Plaintiff-Appellant,

-against-

M-4229
Index No. 112291/06

Tina Kansas,
Defendant-Respondent.

-----X

Plaintiff-appellant having moved for reargument or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 19, 2009 (Appeal No. 100),

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 in its entirety.

ENTER:


DEPUTY 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 December 29, 2009.

Present: Hon. Peter Tom, Justice Presiding,
James M. McGuire
Leland G. DeGrasse
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X

In the Matter of a Family Offense
Proceeding Under Article 8 of the Family
Court Act of the State of New York.

M-4785

Docket No. O-10470/08

Mohamed D.,
Petitioner-Appellant,

-against-

Hawa D.,
Respondent-Respondent.

-----X

Petitioner-appellant, Mohamed D., having moved for leave to prosecute, as a poor person, the appeal from the order of the Family Court, Bronx County, entered on or about June 2, 2009, and for assignment of counsel, a free copy of the transcript, and 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, Dora M. Lassinger, Esq., 6 Howland Road, East Rockaway, NY 11518, Telephone No. (516) 887-8987, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record 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) directing appellant to perfect this appeal 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:


DEPUTY 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 December 29, 2009.

Present - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----x
Marcella Panescu and Stefan Panescu,

Plaintiffs-Respondents,

-against-

M-5400
Index No. 15396/07

Villa Livery Corp. and Shawn Rodriguez,

Defendants-Appellants.
-----x

An appeal having been taken to this Court from the order of the Supreme Court, Bronx County, entered on or about September 2, 2009, and said appeal having been perfected,

And defendants-appellants 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 denied.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

-----X
Zoila Sabando Lopez,
Plaintiff-Respondent,

-against-

M-5189
Index No. 22517/05

Michael Quintana, Esq.,
Defendant-Appellant.
-----X

(And a third party action)
-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about October 10, 2008,

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 and the appeal is dismissed.

ENTER:

David Apolony
DEPUTY 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 December 29, 2009.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

-----X
The People of the State of New York
ex rel. Douglas Latta, also known as
Kelly Graham, also known as Real,

Petitioner-Appellant,

M-4986

-against-

Index No. 402137/09

Ind. No. 3782/07

SCID No. 30125/09

Hon. Robert M. Morgenthau, District Attorney, New York County, and Juan Quinones, Warden of Rikers Island, O.B.C.C.,

Respondents-Respondents.

-----X

Petitioner having moved for leave to appeal to this Court from the order of a Justice of the Supreme Court, New York County, entered on or about September 28, 2009, which denied petitioner's writ of habeas corpus, and for leave to prosecute said appeal as a poor person, 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, to the extent it seeks leave to appeal to this Court, is denied as unnecessary, and petitioner's motion papers are deemed a timely filed notice of appeal. Petitioner is permitted to prosecute said appeal upon the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and file 10 copies of such brief, together with the original record, with this Court. Petitioner-appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
David B. Saxe
Karla Moskowitz
Dianne T. Renwick
Rosalyn H. Richter, Justices.

-----X
Algomod Technologies Corp.,
Plaintiff-Appellant,

-against-

M-5186
Index No. 602492/07

Kevin Price, et al.,
Defendants-Respondents..
-----X

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on September 29, 2009 (Appeal No. 1075),

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:


DEPUTY 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 December 29, 2009.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Helen E. Freedman
Nelson S. Roman, Justices.

-----X
In the Matter of

Brianna L.,

A Dependent Child under 18 Years of Age Pursuant to §384-b of the Social Services Law of the State of New York.

M-4960
Docket No. B463/09

Catholic Guardian Society and Home Bureau, et al.,
Petitioners-Respondents,

Brandon L.,
Respondent-Appellant.

Lisa May, Esq.,
Lawyers for Children, Inc.,
Law Guardian for the Child.

-----X

Respondent-appellant father having moved for leave to prosecute, as a poor person, the appeal from the order of the Family Court, New York County, entered on or about October 2, 2009, and for assignment of counsel, a free copy of the transcript, and 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, Steven N. Feinman, Esq., 19 Court Plaza, Suite 201, White Plains, NY 10601, Telephone No. (914) 949-8214, as counsel for purposes of prosecuting the appeal;

(2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record 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) directing appellant to perfect this appeal 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:


DEPUTY 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 December 29, 2009.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Karla Moskowitz
Richard T. Andrias
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----X
In the Matter of the Application of
Lisa Bishop and Martin Bregman,
Preliminary Executors of the Estate
of Jack E. Maurer, M-5347
Petitioners-Respondents, M-5434
M-5705
To Recover Certain Property of Surrogate's Court
the Deceased Claimed to be Withheld, File No. 575-2005
Rona Maurer,
Objector-Appellant.
-----X

Appeals having been taken to this Court from orders of the Surrogate's Court, New York County, entered on or about December 1, 2008 and November 9, 2009, respectively,

And objector-appellant having moved, pursuant to CPLR 5519(c) and CPLR 6301, for a stay of the order entered on or about December 1, 2008 pending hearing and determination of the appeal taken therefrom (M-5347), and for consolidation of the aforesaid appeals (M-5434),

And petitioners-respondents having cross-moved for expedited hearing of the appeals (M-5705),

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

It is ordered that the motion (M-5347) is granted only to the extent of reinstating the relief granted by the order to show cause dated January 13, 2009 (Kristin Booth Glen, S.) on condition the appeals are perfected on or before February 1, 2010 for the April 2010 Term, and it is further,

Ordered that the motion (M-5434) is granted to the extent of consolidating the appeals and appellant is directed to perfect

same upon 10 copies of one record and one set of appellant's points covering the appeals, and it is further,

Ordered that the cross motion (M-5705) is granted to the extent indicated, and is otherwise denied.

ENTER:


DEPUTY CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in in the County of New York on December 29, 2009.

Present: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Rolando T. Acosta
Leland G. DeGrasse
Nelson S. Roman, Justices.

-----X
Humberto Abenoza,

Plaintiff-Appellant,

-against-

M-5490
Index No. 113631/04

Wahid Sharaf and Isabel Fraser Sewell,
as Executors of the Estate of Siyad
Sharaf,

Defendants-Respondents.
-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, entered on or about August 19, 2009,

And plaintiff-appellant having moved to stay eviction, 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 denied.

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Eugene Nardelli
James M. Catterson
Leland G. DeGrasse, Justices.

-----X
PPX International,
Petitioner-Respondent,

-against-

M-4450
Index No. 570143/09

Harrington Henry LLP,
Respondent-Appellant.

-----X

Respondent-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 May 5, 2009,

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:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. David Friedman, Justice Presiding,
James M. McGuire
Dianne T. Renwick
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
2350 Fifth Avenue LLC,
Plaintiff-Appellant,

-against-

2350 Fifth Avenue Corporation,
Defendant-Respondent.

-----X

M-4271

M-4677

Index No. 113827/06

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about March 26, 2007 (mot. seq. no. 002) (M-4271],

And defendant-respondent having cross-moved to dismiss the aforesaid appeal (M-4677),

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 for an extension of time in which to perfect the appeal is denied (M-4271). The cross motion to dismiss the appeal is granted (M-4677).

ENTER:


DEPUTY 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 December 29, 2009.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
James M. Catterson
Dianne T. Renwick
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
Jairo Wong,
Plaintiff-Appellant,

-against-

M-5389
Index No. 570574/08

V.A.L. Floors, Inc., also known as
Val Flooring, The Trump Corporation,
845 Unlimited Partnership and Bovis
Lend lease, Inc.,
Defendants-Respondents.

-----X

Plaintiff-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 May 7, 2009,

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:


DEPUTY CLERK

PM ORDERS

ENTERED

DECEMBER 22, 2009

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 December 22, 2009.

PRESENT - Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Rolando T. Acosta
Leland G. DeGrasse
Nelson S. Roman, Justices.

-----X
Allstate Insurance Company, et al.,
Plaintiffs-Respondents,

-against-

M-5372
Index No. 600509/03

Belt Parkway Imaging, P.C., Diagnostic
Imaging, P.C., Metroscan Imaging, P.C.,
Parkway MRI, P.C., and
Herbert Rabiner, M.D.,
Defendants-Appellants,

Parkway Magnetic Resonance Imaging,
Inc., et al.,
Defendants-Respondents.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 22, 2009 (mot. seq. no. 014),

And plaintiffs-respondents having moved for an order enlarging the record on appeal to include (1) the documents submitted by plaintiffs and defendants-respondents for in camera inspection by the Supreme Court and directing the Clerk of the Supreme Court, New York County to transfer to this Court the aforesaid documents, (2) to include several letters submitted to the Supreme Court concerning the in camera submissions Exhibits A - C to the moving papers and (3) the imposition of costs and sanctions upon defendants-appellants,

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 expanding the record as requested by plaintiffs without prejudice to defendants arguing that the in camera submissions and the procedure to review said documents was improper. The Clerk of the Supreme Court, New York County is directed to immediately transfer, under seal, to this Court the aforesaid documents. Plaintiffs are granted leave to file a supplemental record at the time of the filing of the respondents' brief consisting of Exhibits A - C inclusive to the moving papers. The motion is otherwise denied.

ENTER:


Clerk.
DEPUTY 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 December 22, 2009.

Present: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Benson Park Associates, LLC,

Plaintiff-Respondent,

-against-

Alexander Herman,

Defendant-Appellant.
-----X

M-5581
Index No. 102966/08

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about December 15, 2008 (mot. seq. no. 001),

And defendant-appellant having moved for a stay of all proceedings, 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 on condition that defendant-appellant post an undertaking in the amount of \$100,000.00 within 21 days of this Court's order, and upon the further condition that said appeal is perfected on or before February 1, 2010 for the April 2010 Term. Upon failure to meet either of these conditions, an order vacating the stay may be entered ex parte, provided that plaintiff-respondent serves a copy of this order upon defendant-appellant within 10 days after the date of entry hereof.

ENTER:



DEPUTY CLERK
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 December 22, 2009.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
David B. Saxe
Karla Moskowitz
Roselyn H. Richter, Justices.

-----X
Nama Holdings, LLC, etc.,
Plaintiff-Respondent,

-against-

M-5326

Index No. 601054/08

Greenberg Traurig LLP, etc., et al.,
Defendants,

Shawn Samson and Jack Kashani,
Defendants-Appellants.

-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about November 18, 2009 (mot. seq. no. 003),

And defendants-appellants having moved to stay enforcement of the aforesaid order, pending hearing and determination of the 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 only to the extent of continuing the relief afforded to defendants by an order of a Justice of this Court, dated November 20, 2009, without prejudice to defendants seeking further relief in Supreme Court, and otherwise denied.

ENTER:


DEPUTY CLERK