

THE FOLLOWING MOTION ORDERS  
WERE ENTERED AND FILED ON  
MARCH 24, 2009

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

M-1166      In the Matter of Petty v Donovan

                  Proceeding, previously perfected for the March 2009  
Term, withdrawn.

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

M-1184      In the Matter of Guity v The New York City Department  
                  of Housing Preservation and Development

                  Proceeding, previously perfected for the April 2009  
Term, withdrawn.

Tom, J.P., Saxe, Sweeny, Acosta, Freedman, JJ.

M-750      In the Matter of V., Ralph v V., Elizabeth, also known  
                  as A., Elizabeth

                  Transfer of trial record and other relief denied;  
appeal dismissed.

Tom, J.P., Saxe, Sweeny, Acosta, Freedman, JJ.

M-379 In the Matter of Bonfante v Donovan

M-586

Leave to prosecute appeal as a poor person and other relief denied; appeal dismissed.

Tom, J.P., Mazzairelli, Nardelli, Catterson, Moskowitz, JJ.

M-685 People v Letterio, Anthony

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

Tom, J.P., Mazzairelli, Nardelli, Catterson, Moskowitz, JJ.

M-721 People v Rodriguez, Angel M., also known as  
Rodriguez, Angel

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

Tom, J.P., Mazzairelli, Nardelli, Catterson, Moskowitz, JJ.

M-730 People v Rodriguez, Benjamin

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



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

M-970 People v Reyes, Richard

M-971 People v Urena, Ramon

M-976 People v Enriquez, Ariel, also known as Henriquez,  
Ariel

M-977 People v Gonzalez, Freddie

M-1022 People v Gunter, Darren

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

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

M-864 People v Walker, Florence

Leave to prosecute appeal as a poor person denied,  
with leave to renew, as indicated.

Tom, J.P., Gonzalez, Sweeny, Caterson, Moskowitz, JJ.

M-3217 In the Matter of W., Kayla Emily - Catholic Guardian  
Society and Home Bureau

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

Tom, J.P., Saxe, Sweeny, Acosta, Freedman, JJ.

M-828        In the Matter of Smith v The New York City Department  
              of Education

              Time to perfect appeal enlarged to the September 2009  
Term, as indicated.

Tom, J.P., Saxe, Sweeny, Acosta, Freedman, JJ.

M-900        In the Matter of S., Thomas v S., Latisha

              Time to perfect appeal enlarged to the September 2009  
Term, as indicated.

Tom, J.P., Mazzarelli, Nardelli, Catterson, Moskowitz, JJ.

M-784        Wilson v The New York City Transit Authority

M-817        Gray v The City of New York

M-866        In the Matter of The City of New York v Novello

              Time to perfect appeals enlarged to the September 2009  
Term.

Tom, J.P., Mazzarelli, Nardelli, Catterson, Moskowitz, JJ.

M-889        Manko v Lenox Hill Hospital

              Time to perfect consolidated appeals enlarged to the  
September 2009 Term.

Mazzarelli, J.P., Friedman, Moskowitz, Acosta, JJ.

M-1097 Seneca Insurance Company, Inc. v J.M.D. All Star  
Import Export, Inc.; Sarin v CNA Financial Corporation

Time to perfect respective appeals enlarged to the  
September 2009 Term; Clerk directed to calendar appeals for  
hearing together in said Term.

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

M-944 In the Matter of Young v Office of Housing Operation/  
Division of Tenant Resources

Time to perfect proceeding enlarged to the September  
2009 Term, as indicated; stay of Civil Court summary eviction  
proceeding vacated.

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

M-444 Kenig v Rada Electronic Industries, Ltd.

Reconsideration denied; appeal dismissed.

Mazzarelli, J.P., Saxe, Catterson, Renwick, Freedman, JJ.

M-948 Allen v Harlem International Community School

Reargument denied.

Mazzarelli, J.P., Andrias, Gonzalez, Moskowitz, Renwick, JJ.

M-722 People v Mosley, Anthony

Enlargement of time to file notice of appeal and other  
relief denied.

Mazzarelli, J.P., Friedman, Moskowitz, Acosta, JJ.

M-1018 Connolly v Payton Lane Nursing Home, Inc - Payton  
Lane Properties, Inc.  
(And a third-party action)

Stay of trial denied.

Andrias, J.P., Gonzalez, Buckley, Acosta, JJ.

M-863 People v Hernandez, Felix

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

Andrias, J.P., Gonzalez, Buckley, Acosta, JJ.

M-1096 Pello v 425 E. 50 Owners Corp. - Barnabel  
(and other actions)

Time to perfect consolidated appeals enlarged to the  
September 2009 Term and caption corrected, as indicated.

Andrias, J.P., Gonzalez, Buckley, Acosta, JJ.

M-782 Martin v Citibank, N.A.

Stay of trial denied.

Andrias, J.P., Friedman, McGuire, Moskowitz, JJ.

M-1137 AWL Industries, Inc. v QBE Insurance Corp.

Stay denied.

Saxe, J.P., Catterson, McGuire, Moskowitz, Acosta, JJ.

M-299 South Street Seaport Limited Partnership v Hayley  
Manufacturing, Inc., doing business as Taqueria  
Mexicali

Leave to appeal from the Appellate Term and other  
relief denied.

Saxe, J.P., Friedman, Sweeny, Renwick, Freedman, JJ.

M-845 People v Shaw, Michael

Leave to file pro se supplemental brief granted for  
the September 2009 Term, to which Term appeal adjourned, as  
indicated.

Friedman, J.P., Nardelli, Catterson, DeGrasse, JJ.

M-799 People v Mateo, Pedro

Appeal dismissed.

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

M-6021 Wechsler v Wechsler

Leave to appeal to the Court of Appeals granted, as  
indicated. All concur except McGuire, J., who dissents as  
follows:

I dissent from the majority's determination to grant the  
wife's application for leave to appeal to the Court of Appeals  
from our order modifying the judgment of divorce (58 AD3d 62  
[2008]). In addition to the extensive modifications we directed,  
on the law and the facts, we remanded for further proceedings,  
including a hearing. As our order did not finally dispose of the  
appeal, the wife's application is for leave to pursue an  
interlocutory appeal to the Court of Appeals. Accordingly, only  
this Court, not the Court of Appeals, is empowered to grant leave  
to appeal (see CPLR 5602[a][1][i]; [b][1]).

The wife's application is premised on the "novel" nature of the question of the proper methodology for valuing the investment holding corporation owned by the husband in light of taxes embedded in the corporation's assets. A novel and important issue would be presented if we had been asked to decide between the valuation approach adopted by the majority of the Eleventh Circuit in *Matter of Jelke v Commissioner of Internal Revenue* (507 F3d 1317 [2007], cert denied \_\_\_US\_\_\_, 129 S Ct 168 [2008]) -- the same approach adopted by the Fifth Circuit in *Matter of Dunn v Commissioner of Internal Revenue* (301 F3d 339 [2002]) -- or the valuation approach adopted by Judge Carnes in his dissenting opinion in *Jelke* (507 F3d at 1333) -- the one espoused in *Jelke* by the Internal Revenue Service. That choice, however, was not before us and it was not before Supreme Court. Indeed, we expressly stated that "[t]his appeal ... does not require us to reach a conclusion about which of the two approaches is preferable with respect to the issue of embedded taxes" (58 AD3d at 68-69). We could not have been clearer in holding that as between the *Jelke/Dunn* methodology proposed by both the neutral expert and the husband's expert, and the methodology proposed by the wife's expert, which is not the one Judge Carnes would have adopted but instead is one without any precedential support, Supreme Court should have chosen the former.

Our authority in this regard is as broad as that of Supreme Court (see *Majauskas v Majauskas*, 61 NY2d 481, 493-494 [1984]). What also is of decisive significance is that we set forth at some length the particular fact-bound reasons supporting both our determination that "under all the factual circumstances of th[e] case" (58 AD3d at 71-72) the approach proposed by the neutral expert and the husband's expert was the more appropriate one (*id.* at 68-73) and our determination that we would not remand for what would amount to another valuation trial even if we were of the view that the approach Judge Carnes would have adopted is more appropriate in a matrimonial action (*id.* at 72 n 7).

Under these circumstances I am at a loss to understand how the Court of Appeals could review our order for anything but an abuse of discretion (*cf. Majauskas*, 61 NY2d at 493-494 [reviewing equitable distribution award and noting that "[t]he authority of the Appellate Division is ... as broad as that of the Trial Judge, and absent an exercise of discretion on its part so egregious that it can be characterized as an abuse as a matter of law, its exercise of discretion is not reviewable by us"] [citation omitted]). Notably, in her reply submission in support of her motion the wife does not provide any reason for concluding that the Court of Appeals could review these aspects of our order

on a broader basis. Furthermore, even the dissenter in this Court, who also votes to grant the wife's application for leave to appeal, did not contend that we had abused our broad discretion.

If I am right about the limited scope of review of our order, a subject that the majority chooses not to discuss, granting leave will not result in a decision from the Court of Appeals resolving any broad question of law regarding the appropriate valuation methodology for corporations like the one owned by the husband. Granting leave, however, will have decidedly adverse consequences, as discussed below, not the least of which is that the Court of Appeals will be burdened with reviewing an order that is essentially beyond its review powers.

But on the assumption that I am wrong and the Court of Appeals can exercise some review power broader than abuse of discretion, leave to appeal still should not be granted. Unless there is a settlement, a consummation devoutly to be wished but one that is undermined by the majority's decision to grant leave, this case will be coming back to this Court following our remand and the entry of a final judgment. When the next appeal to this Court is resolved we can grant leave (CPLR 5602[a][1][i]; [b][1]) and, assuming we do not again remand, so could the Court of Appeals (CPLR 5602[a][1][i]). The wife provides no reason at all for supposing that she will be prejudiced if review by the Court of Appeals occurs after final judgment rather than now.

This bitter and protracted action was commenced in 2001. We expressly recognized that expedition was necessary in this case given, among other things, "the passage of more than seven years since the commencement of this action and the enormous litigation costs incurred by the parties" (58 AD3d at 77). For these same reasons, moreover, we directed that the hearing we ordered "take place as expeditiously as possible and, in the event of another appeal, encourage[d] either party to move this Court for an order expediting the appeal" (*id.* at 90).

Inexplicably, the two other members of the majority who agreed with the necessity for expedition nonetheless cast their votes in favor of an interlocutory appeal to the Court of Appeals.

In contrast to New York law, federal appellate procedure permits interlocutory appeals only under narrow circumstances (*see generally Cunningham v Hamilton County, Ohio*, 527 US 198, 203-204 [1999]; *id.* at 203 ["an appeal ordinarily will not lie until after final judgment has been entered in a case"]). The general prohibition against taking an appeal before final judgment "serves several salutary purposes" (*id.*), including

"avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals" and "the important purpose of promoting efficient judicial administration" (*id.* at 203-204 [internal quotation marks omitted; brackets in original]). Although New York law broadly permits appeals to intermediate appellate courts, it furthers those same salutary purposes when it comes to interlocutory appeals to the Court of Appeals in civil cases. They are allowed, after all, only when leave to appeal is granted by the Appellate Division (CPLR 5602[b]). We vindicate those purposes only if we are most circumspect about exercising the authority entrusted to us. If this were a novel question of law presenting an issue of state-wide significance, it might be appropriate now to grant leave. But this appeal lies at the opposite end of the spectrum. The fact-bound nature of our resolution of the valuation issue is evident and undeniable; the very fact that no matrimonial action previously has arisen in which this valuation issue has been addressed is proof enough of the absence of any issue of state-wide significance.

If this case presents a valuation issue that is appropriate for review by the Court of Appeals, that review should occur after a final judgment has been entered, when the Court of Appeals also may review all issues of law we previously decided and all issues of law we may decide when the case comes back before us following remand. Instead, the majority guarantees further delays and further costs on top of the extensive delays and enormous costs that already have been incurred.

I respectfully submit that the majority's decision to grant an interlocutory appeal at this juncture is profligate as well as unreasonable.

Gonzalez, J.P., Buckley, Moskowitz, Renwick, DeGrasse, JJ.

M-894 Tatta v Eggleston

Leave to prosecute appeal as a poor person denied.

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

M-1016 Melnick v Khoroushi

Leave to appeal to the Court of Appeals denied.

Mazzarelli, J.

M-515 People v Abreu, Ernesto

Leave to appeal to this Court denied.

Andrias, J.

M-732 People v Williams, Javaar

Release on recognizance or other relief denied.

Sweeny, J.

M-950 People v Santana, Leonardo

Leave to appeal to this Court denied.

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

M-5855 In the Matter of James J. Jackson  
(admitted as James Judson Jackson),  
an attorney and counselor-at-law:

Respondent publicly censured. Opinion Per Curiam.  
All concur.

**The following orders were entered and filed on March 19, 2009:**

Tom, J.P., Andrias, Saxe, DeGrasse, JJ.

M-812 In the Matter of Hotel 71 Mezz Lender, LLC. v  
Rosenblatt - Mitchell - Mitchell Hotel Group, LLC

Stay of all proceedings, including turnover of certain  
funds, granted on condition appeal perfected for the June 2009  
Term, as indicated.

Andrias, J.P., Gonzalez, Buckley, Acosta, JJ.

M-829 People v Cameron, Kenneth

Appeal dismissed.