

May 01, 2014

CASES

4 No. 66
In the Matter of the Board of Managers of
French Oaks Condominium,
 Respondent,
 v.
Town of Amherst, et al.,
 Appellants,
Williamsville Central School District,
 Intervenor-Respondent.

Order reversed, with costs, and petition dismissed.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Read, Smith,
Rivera and Abdus-Salaam concur.
Judge Pigott took no part.

1 No. 141 SSM 7
Maria Pilar Bustos, et al.,
 Appellants,
 v.
Lenox Hill Hospital,
 Respondent,
Pedro Segarra, M.D., et al.,
 Defendants.

On review of submissions pursuant to section 500.11
of the Rules, order affirmed, with costs, and certified
question not answered upon the ground that it is
unnecessary. The Appellate Division correctly
determined that plaintiff failed to submit sufficient
evidence to support a finding of liability against
defendant hospital.
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott and Rivera concur.
Judge Abdus-Salaam took no part.

2 No. 37
In the Matter of Raghubir K. Gupta, &c.

Grievance Committee for the Second,
Eleventh, and Thirteenth Judicial Districts,
 Respondent;
Raghubir K. Gupta,
 Appellant.

Appeal dismissed, without costs, upon the ground
that the issues presented have become moot.
Appellant was automatically disbarred upon his
conviction of a felony on March 14, 2014 (Judiciary
Law § 90[4][a]).
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott and Abdus-Salaam concur.
Judge Rivera took no part.

1 No. 39
The People &c.,
 Respondent,
 v.
Anthony Lewis,
 Appellant.

Order affirmed.
Opinion by Judge Pigott.
Chief Judge Lippman and Judges Smith and Rivera
concur.
Judge Graffeo concurs in an opinion in which Judges
Read and Abdus-Salaam concur.

3 No. 40
The People &c.,
 Respondent,
 v.
Terence McCray,
 Appellant.

Order affirmed.
Opinion by Judge Smith.
Judges Graffeo, Read and Abdus-Salaam concur.
Judge Rivera dissents and votes to reverse in an
opinion in which Chief Judge Lippman and Judge
Pigott concur.

4 No. 67
The People &c.,
 Respondent,
 v.
Floyd L. Smart,
 Appellant.

Order affirmed.
Opinion by Judge Abdus-Salaam.
Judges Graffeo, Read, Smith, Pigott and Rivera
concur.
Chief Judge Lippman concurs in result in an opinion.

4 No. 80
Village of Ilion et al.,
 Plaintiffs,
Village of Herkimer,
 Appellant,
 v.
County of Herkimer, &c.,
 Respondent,
et al.,
 Defendants.

Order modified, without costs, by remitting to
Supreme Court, Oneida County, for further
proceedings in accordance with the opinion herein
and, as so modified, affirmed.
Opinion by Chief Judge Lippman.
Judges Graffeo, Read, Smith and Pigott concur.
Judge Abdus-Salaam dissents in part in an opinion in
which Judge Rivera concurs.

MOTIONS

1 Mo. No. 2014-171
In the Matter of Ana Liza Bay,
 Respondent,
 v.
Pedro Solla,
 Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2014-154
In the Matter of Douglas R. Berman,
 Appellant,
 v.
Imtiaz Baraichi,
 Respondent.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the proceeding within the
meaning of the Constitution.

1 Mo. No. 2014-333
The People &c.,
 Appellant,
 v.
William Brown,
 Respondent.

Motion for assignment of counsel granted and Robert
S. Dean, Esq., Center for Appellate Litigation, 74
Trinity Place, 11th Floor, New York, NY 10006
assigned as counsel to the respondent on the appeal
herein.

4 Mo. No. 2014-376
The People &c.,
 Appellant,
 v.
Michael S. Brumfield,
 Respondent.

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

4 Mo. No. 2014-230
In the Matter of Alex C., Jr.

Cattaraugus County Department of Social
Services,
 Respondent;
Alex C., Sr.,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2014-408
Cooperstown Holstein Corporation,
 Appellant,
 v.
Town of Middlefield,
 Respondent.

Motion by American Petroleum Institute et al. for
leave to appear amici curiae on the appeals herein
granted only to the extent that the proposed brief is
accepted as filed.

In the Matter of Mark S. Wallach, as Chapter
7 Trustee for Norse Energy Corp. USA,
 Appellant,
 v.
Town of Dryden et al.,
 Respondents.

3 Mo. No. 2014-414
Cooperstown Holstein Corporation,
 Appellant,
 v.
Town of Middlefield,
 Respondent.

Motion by Brewery Ommegang Ltd. et al. for leave
to appear amici curiae on the appeal herein granted
only to the extent that the proposed brief is accepted
as filed. Three copies of the brief must be served
and an original and nine copies filed within seven
days.

3 Mo. No. 2014-441
Cooperstown Holstein Corporation,
 Appellant,
 v.
Town of Middlefield,
 Respondent.

In the Matter of Mark S. Wallach, as Chapter
7 Trustee for Norse Energy Corp. USA,
 Appellant,
 v.
Town of Dryden et al.,
 Respondents.

1 Mo. No. 2014-381
The People &c.,
 Respondent,
 v.
Joshue DeJesus,
 Appellant.

4 Mo. No. 2014-231
In the Matter of Alisa E.

Livingston County Department of Social
Services,
 Respondent;
Wendy F.,
 Appellant.

4 Mo. No. 2014-286
The People &c.,
 Respondent,
 v.
Pernell A. Flanders,
 Appellant.

Motion by Joint Landowners Coalition of New York,
Inc., et al. for leave to appear amici curiae on the
appeals herein granted only to the extent that the
proposed brief is accepted as filed.

Motion for assignment of counsel granted and Robert
S. Dean, Esq., Center for Appellate Litigation, 74
Trinity Place, 11th Floor, New York, NY 10006
assigned as counsel to the appellant on the appeal
herein.

Motion for leave to appeal denied.

Motion for assignment of counsel granted and John
J. Raspante, Esq., 102 Lafayette Street, Utica, NY
13502 assigned as counsel to the appellant on the
appeal herein.

2 Mo. No. 2014-216
In the Matter of Breanna M.G. (Anonymous),
&c.

Little Flower Children and Family Services,
et al.,

 Respondents;
Rebecca H. (Anonymous), &c.,
 Appellant;
et al.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2014-269
In the Matter of Jada G. et al.

Wyoming County Department of Social
Services,

 Respondent;
Marcella G.,
 Respondent;
Jonathan C.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2014-384

The People &c.,
 Respondent,
 v.
Richard Garcia,
 Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

 Mo. No. 2014-403
In the Matter of Thelen LLP.

Yann Geron, as Chapter 7 Trustee of the
Estate of Thelen LLP,
 Appellant,

 v.
Seyfarth Shaw LLP,
 Respondent.

Motion by DLA Piper LLP (US) et al. for leave to appear amici curiae on consideration of the certified questions herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

4 SSD 23
Frederick Ingutti, et al.,
 Appellants,
 v.
Rochester General Hospital,
 Respondent.

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

2 Mo. No. 2014-210
Asantewa James,
 Appellant,
 v.
Tower Insurance Company of New York, et
al.,
 Respondents,
et al.,
 Defendant.
(And a Third-Party Action.)

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

3 Mo. No. 2014-267
In the Matter of Dustin JJ., &c.

Broome County Department of Social
Services,
 Respondent;
Clyde KK.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2014-404
KeySpan Gas East Corporation,
 Respondent,
 v.
Munich Reinsurance America, Inc. et al.,
 Appellants.

Motion by Complex Insurance Claims Litigation Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.
Chief Judge Lippman and Judge Rivera took no part.

3 SSD 22
In the Matter of Joseph Lee,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

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

3 Mo. No. 2014-434
In the Matter of Jorge L. Linares,
 Appellant,
 v.
Andrea W. Evans, &c.,
 Respondent.

Motion for poor person relief granted.

4 Mo. No. 2014-248
The People &c. ex rel. Mitchell Montgomery,
 Appellant,
 v.
Dale Artus, &c.,
 Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Judge Pigott took no part.

2 Mo. No. 2014-9
In the Matter of Natural Resources Defense
Council, Inc., et al.,
 Appellants,
 v.
New York State Department of
Environmental Conservation,
 Respondent.

Motion for leave to appeal granted.

1 Mo. No. 2014-439
Norex Petroleum Limited,
 Appellant,
 v.
Leonard Blavatnik, et al.,
 Respondents.

Motion by David Paul Horowitz for leave to file a
brief amicus curiae on the appeal herein granted and
the proposed brief is accepted as filed. Three copies
of the brief must be served and an original and nine
copies filed within seven days.

2 Mo. No. 2014-322
In the Matter of Town of North Hempstead,
 Appellant-Respondent,
 v.
County of Nassau,
 Respondent-Appellant.

Motion by County of Suffolk for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

2 Mo. No. 2014-372
In the Matter of Town of North Hempstead,
 Appellant-Respondent,
 v.
County of Nassau,
 Respondent-Appellant.

Motion by City of Long Beach for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

2 Mo. No. 2014-143
Town of Oyster Bay,
 Appellant,
 v.
Lizza Industries, Inc.,
 Respondent.
(And Nine Other Actions.)

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2014-386
The People &c.,
 Appellant,
 v.
Kharye Jarvis,
 Respondent.

Motion for assignment of counsel granted and William G. Pixley, Esq., 620 Park Avenue, No. 410, Rochester, NY 14607 assigned as counsel to the respondent on the appeal herein.

2 Mo. No. 2014-246
In the Matter of Diceir D.R.R. (Anonymous).

Administration for Children's Services,
Respondent;
Takeyia J. (Anonymous),
Appellant.
(And Other Proceedings.)

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2014-428
The People &c.,
Respondent,
v.
Sergio Rodriguez,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

3 SSD 20
In the Matter of Otes G. Rodriguez,
Appellant,
v.
Thomas LaValley, &c.,
Respondent.

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

2 Mo. No. 2014-332
The People &c.,
Respondent,
v.
Rasaun Sanders, &c.,
Appellant.

Motion for assignment of counsel granted and Mark Diamond, Esq., PO Box 287356, Yorkville Station, New York, NY 10128 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2014-211
In the Matter of Davey Shark,
 Appellant,
 v.
New York State Division of Parole Chair,
 Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

1 Mo. No. 2014-212
In the Matter of State of New York,
 Respondent,
 v.
Robert V.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2014-145
Ana Vega,
 Respondent,
 v.
103 Thayer Street, LLC,
 Defendant,
The City of New York,
 Appellant.

Motion to vacate this Court's November 27, 2013 order of preclusion granted.

3 Mo. No. 2014-351
In the Matter of Mark S. Wallach, as Chapter
7 Trustee for Norse Energy Corp. USA,
 Appellant,
 v.
Town of Dryden et al.,
 Respondents.

Motion by Vicki Been et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

3 Mo. No. 2014-413
In the Matter of Mark S. Wallach, as Chapter
7 Trustee for Norse Energy Corp. USA,
 Appellant,
 v.
Town of Dryden et al.,
 Respondents.

Motion by Brewery Ommegang Ltd. et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

4 Mo. No. 2014-282
The People &c.,
 Respondent,
 v.
Paul Williams,
 Appellant.

Motion for assignment of counsel granted and Philip Rothschild Esq., Frank H. Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2014-268
The People &c. ex rel. Isiah Williams,
 Appellant,
 v.
Patrick O'Flynn, &c., et al.,
 Respondents.

Motion for leave to appeal dismissed upon the ground that it does not lie from the order of an individual Justice of the Appellate Division (see NY Const, art VI, § 3[b]; CPLR 5602).
Motion for poor person relief dismissed as academic.

2 Mo. No. 2014-258
The People &c.,
 Appellant,
 v.
Sidney Wisdom,
 Respondent.

Motion for reargument denied.