

December 20, 2016

CASES

1 No. 233 SSM 39
Rafael Batista,
 Appellant,
 v.
Manhattanville College, et al.,
 Respondents,
The Female Academy of the Sacred Heart,
 Defendant.

On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, modified, without costs, by granting plaintiff's motion for partial summary judgment on the issue of liability on his Labor Law § 240(1) claim against defendants Manhattanville College and TJR, Inc. and, as so modified, affirmed, and certified question answered in the negative. Defendants failed to raise a triable issue of fact whether the plaintiff was the sole proximate cause of his accident (see Barreto v Metropolitan Transp. Auth., 25 NY3d 426, 433-434 [2015]).
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1 No. 193
The People &c.,
 Respondent,
 v.
James Brown,
 Appellant.

Order reversed and case remitted to Supreme Court, New York County, for further proceedings in accordance with the opinion herein.
Opinion by Judge Pigott.
Chief Judge DiFiore and Judges Abdus-Salaam, Stein, Fahey and Garcia concur.
Judge Rivera concurs in part in a separate concurring opinion.

1 No. 230 SSM 28
In the Matter of Bruckner Realty LLC,
 Appellant,
 v.
Jeanette Cruz,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. Petitioner failed to satisfy its burden on its motion for summary judgment of making a prima facie showing of entitlement to judgment as a matter of law. Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1 No. 232 SSM 35
The People &c.,
 Appellant,
 v.
Jeffrey Bryant,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and judgment of Supreme Court, New York County, reinstated, in a memorandum. Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

 No. 195
The People &c.,
 Appellant,
 v.
Earl Canady,
 Respondent.

Order reversed and case remitted to the Appellate Term, Second, Eleventh and Thirteenth Judicial Districts, for consideration of the facts and issues raised but not determined on appeal to that court. Opinion by Judge Pigott. Chief Judge DiFiore and Judges Abdus-Salaam, Stein, Fahey and Garcia concur. Judge Rivera dissents and votes to affirm in an opinion.

2 No. 205
The People &c.,
 Respondent,
 v.
Prince Clark,
 Appellant.

Order affirmed.
Opinion by Judge Rivera.
Chief Judge DiFiore and Judges Pigott, Abdus-Salaam, Stein, Fahey and Garcia concur.

1 No. 231 SSM 32
Estate of Helen Del Terzo, et al.,
 Respondents,
 v.
33 Fifth Avenue Owners Corp.,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. The Appellate Division did not err in holding defendant 33 Fifth Avenue Owners Corp. breached paragraph 16(b) of its proprietary lease by unreasonably withholding consent to transfer shares allocated to an apartment and the lease appurtenant thereto from plaintiff Estate of Helen Del Terzo to plaintiffs Michael Del Terzo and Julius Robert Del Terzo. Defendant's remaining arguments are unavailing.
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

 No. 172
Flo & Eddie, Inc., a California Corporation,
individually and on behalf of all others
similarly situated,
 Respondent,
 v.
Sirius XM Radio, Inc., a Delaware
Corporation,
 Appellant,
Does, 1 through 10,
 Defendants.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, the certified question answered in the negative.
Opinion by Judge Stein.
Judges Pigott, Fahey and Garcia concur, Judge Fahey in a separate concurring opinion.
Judge Rivera dissents in an opinion in which Judge Abdus-Salaam concurs.
Chief Judge DiFiore took no part.

1 No. 204
The People &c.,
 Respondent,
 v.
Patrick Morgan,
 Appellant.

Order affirmed.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Pigott, Rivera,
Abdus-Salaam, Stein and Fahey concur.

2 No. 202
The People &c.,
 Respondent,
 v.
Anthony Perkins,
 Appellant.

Order reversed, defendant's motion to suppress the
line-up identifications granted, the second count of
the indictment dismissed, and case otherwise remitted
to Supreme Court, Queens County, for further
proceedings in accordance with the opinion herein.
Opinion by Judge Abdus-Salaam.
Chief Judge DiFiore and Judges Pigott, Rivera, Stein,
Fahey and Garcia concur.

1 No. 191
Stonehill Capital Management, LLC, et al.,
 Appellants,
 v.
Bank of the West,
 Respondents,

Order, insofar as appealed from, reversed, with costs,
and judgment of Supreme Court, New York County,
in favor of plaintiffs on their breach of contract claim
against defendant Bank of the West reinstated.
Opinion by Judge Rivera.
Chief Judge DiFiore and Judges Pigott, Abdus-
Salaam, Stein, Fahey and Garcia concur.

 No. 194
The People &c.,
 Respondent,
 v.
Terrence Young,
 Appellant.

Order affirmed.
Opinion by Judge Pigott.
Chief Judge DiFiore and Judges Abdus-Salaam,
Stein, Fahey and Garcia concur.
Judge Rivera concurs in result in a separate
concurring opinion.

MOTIONS

1 Mo. No. 2016-913
In the Matter of Patricia A., et al., &c.

Norman A. et al.,
Appellants;
Administration for Children's Services,
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.

2 Mo. No. 2016-988
Marie Abrams, &c.,
Appellant,

v.
Brad Bute, &c., et al.,
Defendants,
Jessica "Smith," et al.,
Respondents.

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

1 Mo. No. 2016-136
The People &c.,
Respondent,

v.
James Brown,
Appellant.

Motion to expand the record on appeal denied.

2 Mo. No. 2016-932
Emil Chambliss,
 Appellant,
 v.
University Group Medical Associates, et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal as against defendants South Island Medical Associates and Dr. Mark Joseph, dismissed as untimely (see CPLR 5513[b]), as the prior motion for leave to appeal made at the Appellate Division was untimely as to them (see Arthur Karger, Powers of the New York Court of Appeals § 12:3 at 436-437 [3d ed rev 2005]); motion, insofar as it seeks leave to appeal as against defendants University Group Medical Associates and Dr. Steven Siegel, dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

1 Mo. No. 2016-890
In the Matter of Lillian Cheung,
 Appellant,
 v.
Commissioner, Department of Housing
Preservation and Development, et al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2016-872
Andrew Cleary,
 Appellant,
et al.,
 Plaintiff,
 v.
Automobile Insurance Company of Hartford,
Connecticut, &c.,
 Respondent,
et al.,
 Defendant.

Motion for leave to appeal denied.

2 Mo. No. 2016-921
Deborah Etzion,
 Appellant,
 v.
Rafael Etzion, et al.,
 Respondents.

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

2 Mo. No. 2016-959
Deborah Etzion,
 Appellant,
 v.
Rafael Etzion, et al.,
 Respondents.

Motion by Women's Bar Association of the State of New York for leave to appear amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

1 Mo. No. 2016-1077
The People &c.,
 Appellant,
 v.
Dan Evans,
 Respondent.

Motion to dismiss the appeal granted and appeal dismissed upon the ground that the reversal by the Appellate Division was not "on the law alone or upon the law and such facts which, but for the determination of law, would not have led to reversal" (CPL 450.90[2][a]).

3 Mo. No. 2016-847
In the Matter of Michael Flournoy,
 Appellant,
 v.
Norman R. Bezio, &c., et al.,
 Respondents.

Motion for leave to appeal denied.
Judge Stein took no part.

3 Mo. No. 2016-973
In the Matter of James Franklin,
 Appellant,
 v.
New England Motor Freight et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

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

2 Mo. No. 2016-986
In the Matter of Nancy Anastasia Gonos,
Appellant,
v.
Emmanuel Hadzipetros,
Respondent.

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

1 Mo. No. 2016-940
In the Matter of Michael Grabell,
Appellant,
v.
New York City Police Department,
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Judge Fahey took no part.

1 Mo. No. 2016-941
In the Matter of Michael Grabell,
Appellant,
v.
New York City Policy Department,
Respondent.

Motion by Reporters Committee for Freedom of the Press, et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.
Judge Fahey took no part.

1 Mo. No. 2016-971
In the Matter of Michael Grabell,
Appellant,
v.
New York City Police Department,
Respondent.

Motion by New York Civil Liberties Union et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.
Judge Fahey took no part.

2 Mo. No. 2016-969
Robert Gunther,
Respondent,
v.
Antenor P. Vilceus,
Appellant.

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

3 Mo. No. 2016-987
Johnathan Johnson,
Appellant,
v.
William K. Suter et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2016-1013
Johnathan Johnson,
Appellant,
v.
Brian Curtis et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2016-1014
Johnathan Johnson,
Appellant,
v.
Maureen Sienko, et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2016-1020
Johnathan Johnson,
Appellant,
v.
Theresa J. Casal,
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2016-991
Kolel Damsek Eliezer, Inc.,
 Respondent,
 v.
Victor Schlesinger, &c., et al.,
 Appellants,
et al.,
 Defendants.

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

4 Mo. No. 2016-765
Donna M. Lattuca,
 Appellant,
 v.
John M. Lattuca,
 Respondent.

Motion for leave to appeal denied.
The Court takes this occasion to restate the rule that denial of a motion for leave to appeal is not equivalent to an affirmance and has no precedential value (see Matter of Marchant v Mead-Morrison Mfg. Co., 252 NY 284, 297-298 [1929]).

4 Mo. No. 2016-841
Donna M. Lattuca,
 Appellant,
 v.
John M. Lattuca,
 Respondent.

Motion by National Center for Law and Economic Justice, et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

1 Mo. No. 2016-980
Nella Manko,
 Appellant,
 v.
Dana Mannor, et al.,
 Respondents,
et al.,
 Defendants.

Motion for reargument of motion for leave to appeal dismissed as untimely (see Rules of Ct of Appeals [22 NYCRR] § 500.24[b]).
Motion for poor person relief dismissed as academic. Judge Abdus-Salaam took no part.

1 Mo. No. 2016-1031
Nella Manko,
 Appellant,
 v.
Dana Mannor, et al.,
 Respondents,
et al.,
 Defendants.

Motion to for reconsideration of this Court's May 11, 2010 dismissal order dismissed as untimely (see Rules of Ct of Appeals [22 NYCRR] § 500.24[b]). Motion for poor person relief dismissed as academic. Judge Abdus-Salaam took no part.

2 Mo. No. 2016-965
Colleen F. Mayer, &c.,
 Appellant,
 v.
Kristen M. Mayer, et al.,
 Respondents,
et al.,
 Defendants.

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

1 Mo. No. 2016-1125
In the Matter of Lizzette Morales,
 Appellant,
 v.
New York City Housing Authority,
 Respondent.

Motion for reargument of motion for leave to appeal denied.

3 Mo. No. 2016-993
In the Matter of Danny Rosa,
 Respondent,
 v.
June Electrical Corporation et al.,
 Appellants.
Workers' Compensation Board,
 Respondent.

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

1 Mo. No. 2016-967
State Farm and Casualty Company,
Respondent,
v.
Jennifer Guzman et al.,
Defendants,
Dulce Cabrera,
Appellant.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as resolved the appeal from the Supreme Court order denying reargument and renewal, dismissed upon the ground that such portions of the order do not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2 Mo. No. 2016-978
In the Matter of Reginald Swinton,
Appellant,
v.
Dora Schriro, &c.,
Respondent.

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

1 Mo. No. 2016-893
In the Matter of Take Two Outdoor Media
LLC,
Appellant,
v.
Board of Standards and Appeals of the City of
New York,
Respondent.

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

1 Mo. No. 2016-863
Michael Todres, as the Executor of the Estate
of Sarah Carter Collyer, Deceased,
Respondent,
v.
W7879, LLC, et al.,
Appellants.

Motion for leave to appeal denied.

1 Mo. No. 2016-950
Michael Todres, as the Executor of the Estate
of Sarah Carter Collyer, Deceased,
 Appellant,
 v.
W7879, LLC, et al.,
 Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2016-963
Michael C. Weidner,
 Respondent,
 v.
Lisa Fix Weidner,
 Appellant.

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