

OCTOBER 18, 2007

CASES

1                   No.    113  
Linda Boyd,  
                                  Respondent,  
                  v.  
Manhattan & Bronx Surface Transit  
Operating Authority et al.,  
                                  Appellants.

Order reversed, with costs, and a new  
trial ordered.  
Opinion by Judge Smith.  
Chief Judge Kaye and Judges Ciparick,  
Graffeo, Read, Pigott and Jones concur.

1                   No.    116  
Bruce Friedman, &c.,  
                                  Appellant,  
                  v.  
Connecticut General Life  
Insurance Company,  
                                  Respondent.

Order, insofar as appealed from, modified,  
without costs, by reinstating the eighth  
cause of action and remitting to Supreme  
Court, New York County, for further  
proceedings on that cause of action and,  
as so modified, affirmed.  
Opinion by Judge Read.  
Chief Judge Kaye and Judges Ciparick,  
Graffeo, Smith, Pigott and Jones concur.

4                   No.    122  
In the Matter of the Estate of  
Burton Wallens, Deceased.  
Maggie Wallens,  
                                  Appellant;  
Charles Wallens,  
                                  Respondent.

Judgment of Surrogate's Court appealed  
from and order of the Appellate Division  
brought up for review reversed, without  
costs, and matter remitted to Surrogate's  
Court, Erie County, for further  
proceedings in accordance with the opinion  
herein.  
Opinion Per Curiam.  
Chief Judge Kaye and Judges Ciparick,  
Graffeo, Read, Smith, Pigott and Jones  
concur.

MOTIONS

- 2-

2-10 Mo. No. 820  
American Bridge Company et al.,  
Appellants,  
v.  
Acceptance Insurance Company,  
Respondent,  
et al.,  
Defendant.  
(And a Third-Party Action.)

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

Mo. No. 1176  
The People &c.,  
Respondent,  
v.  
Nagmeldeen Azaz,  
Appellant.

Motion for assignment of counsel granted and Lynn W.L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1-10 Mo. No. 943  
In the Matter of Allison B.  
(Anonymous).

Motion for leave to appeal denied.

Suffolk County Department of  
Social Services,  
Respondent;  
Darren B. (Anonymous),  
Appellant.  
(And Four Other Proceedings.)

2-10 Mo. No. 992  
In the Matter of David J.  
Ciraolo, &c.,  
Appellant;  
Whitey Produce Co., Inc. 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 proceeding within the meaning of the Constitution.

Mo. No. 1192  
In the Matter of Data Tree, LLC,  
Appellant,  
v.  
Edward P. Romaine, &c.,  
Respondent.

Motion by City of New York for leave to file a brief amicus curiae on the appeal herein granted. Two copies of the brief must be served and 24 copies filed within seven days.

1-13 Mo. No. 1018  
Alassane Diakite, &c.,  
Appellant,  
v.  
The City of New York,  
Respondent,  
Sean M. Dunleavy,  
Defendant.

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

1-10 Mo. No. 990  
Robert Eden,  
Appellant,  
v.  
St. Luke's-Roosevelt Hospital  
Center, et al.,  
Respondents.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that denied appellant's motion to amend the complaint, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

Mo. No. 1188  
Rachel Ehrenfeld,  
Appellant,  
v.  
Khalid Salim Bin Mahfouz,  
Respondent.

Motion by Advance Publications, Inc. et al. for leave to appear amici curiae on consideration of the certified question herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days. Judge Smith took no part.

2-13 Mo. No. 1010  
Essex Insurance Company,  
Appellant,  
v.  
Roy L. Pingley,  
Defendant,  
Brim Recyclers, Inc. et al.,  
Respondents.

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

2-10 Mo. No. 954  
In the Matter of ELRAC, Inc. &c.,  
Appellant,  
v.  
Shari Suero et al.,  
Respondents.

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

2-13 Mo. No. 916  
In the Matter of Donald Feola,  
Respondent,  
v.  
Patrick J. Carroll, &c. et al.,  
Appellants.

Motion for leave to appeal granted.

2-14 Mo. No. 891  
45-02 Food Corp.,  
Respondent-Appellant,  
v.  
45-02 43rd Realty, LLC,  
Appellant-Respondent.

Motions 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.

Mo. No. 1160  
The People &c.,  
Respondent,  
v.  
Hector Frazier,  
Appellant.

Motion for assignment of counsel granted  
and Lynn W.L. Fahey, Esq., Appellate  
Advocates, 2 Rector Street, 10th Floor,  
New York, NY 10006 assigned as counsel to  
the appellant on the appeal herein.

2-10 Mo. No. 947  
In the Matter of Malcolm G.  
(Anonymous),  
Appellant.

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

3-10 Mo. No. 910  
Nancy E. Gold,  
Appellant,  
v.  
Patrick A. DiCerbo,  
Respondent.

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

2-10 Mo. No. 887  
Michael Goldstein et al.,  
Respondents,  
v.  
Venera Held,  
Appellant.

Motion for leave to appeal dismissed as  
untimely. The prior motion for leave to  
appeal made to the Appellate Division was  
untimely (see Karger, Powers of the New  
York Court of Appeals 12:3, at 436-437  
[rev 3d ed 2005]).

4-14 Mo. No. 958  
Harleysville Insurance Company,  
Appellant,  
v.  
Travelers Insurance Company et  
al.,  
Respondents.

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

Mo. No. 1117  
The People &c.,  
Respondent,  
v.  
Burton Jeffrey Hunter,  
Appellant.

Motion to vacate this Court's August 31,  
2007 dismissal order granted.

Mo. No. 1170  
ITC Limited and ITC Hotels  
Limited,  
Appellants,  
v.  
Punchgini, Inc., Raja Jhanjee,  
Paragnesh Desai, Vicky Vij,  
Dhandu Ram, Mahendra Singh,  
Bachan Rawat, Bukhara Grill II,  
Inc.,  
Respondents.

Motion by American Intellectual Property  
Law Association for leave to appear  
amicus curiae on consideration of the  
certified question herein granted only to  
the extent that the proposed brief is  
accepted as filed.

Mo. No. 1172  
ITC Limited and ITC Hotels  
Limited,  
Appellants,  
v.  
Punchgini, Inc., Raja Jhanjee,  
Paragnesh Desai, Vicky Vij,  
Dhandu Ram, Mahendra Singh,  
Bachan Rawat, Bukhara Grill II,  
Inc.,  
Respondents.

Motion by International Trademark  
Association for leave to appear amicus  
curiae on consideration of the  
certified question herein granted only to  
the extent that the proposed brief is  
accepted as filed.

Mo. No. 1127  
The People &c., Respondent,  
v.  
Lance Daniel Jenkins,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 denied as unnecessary and motion papers treated as a timely CPL 460.20 application.

3-10 Mo. No. 845  
In the Matter of Rebecca KK.,  
&c.

Motion for leave to appeal denied.

Cortland County Department of  
Social Services, Respondent;  
Douglas KK., Appellant.

3-10 Mo. No. 915  
Thomas A. Martin, Appellant,  
v.  
Robert H. Bixby, et al.,  
Respondents.

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

2-10 Mo. No. 1120  
In the Matter of Robert Master,  
&c., et al., Respondents,  
v.  
Charles J. Pohanka, et al.,  
Appellants,  
et al., Respondents.

Motion for leave to appeal granted.

2-10 Mo. No. 918  
In the Matter of Curtis McRae,  
Appellant,  
v.  
New York City Transit Authority,  
Respondent.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]).  
Judge Jones took no part.

1-14 Mo. No. 965  
Christopher A. Measom et al.,  
Respondents,  
v.  
Greenwich and Perry Street  
Housing Corporation,  
Appellant.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain this motion for leave to appeal from the order of the Appellate Division where the appeal to the Appellate Division was from an order entered in an appeal from another court (NY Const, art VI, 3[b][7]; CPLR 5602[a]).

2-14 Mo. No. 952  
Mark Misk,  
Appellant,  
v.  
Joyce G. Moss et al.,  
Defendants,  
Angela O'Brien,  
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 (see Karger, Powers of the New York Court of Appeals 5:3, at 109 [rev 3d ed 2005]).

2-10 Mo. No. 880  
In the Matter of City of New  
York, South Jamaica I Urban  
Renewal Area.  
Luis Gonzalez et al.,  
Appellants;  
City of New York,  
Respondent.

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

2-10 Mo. No. 948  
Otrada, Inc., &c.,  
Respondent,  
v.  
Assessor, Town of Ramapo, et al.,  
Appellants.

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

2-10 Mo. No. 852  
Preserver Insurance Company,  
Appellant,  
v.  
Arthur Ryba, et al.,  
Respondents.

Motion for leave to appeal granted.

Mo. No. 1162  
In the Matter of Javier R.,  
A Dependent Child Under the Age  
of Eighteen Years, etc.,  
Robert R.,  
Appellant,  
Melinda R.,  
Respondent,  
Administration for Children's  
Services,  
Respondent.

Motion for assignment of counsel granted  
and Randall S. Carmel, Esq., 53 Jackson  
Avenue, Syosset, NY 11793 assigned as  
counsel to the appellant on the appeal  
herein.

Mo. No. 1184 SSD 54  
In the Matter of the Application  
of Nyapati R. Rao, M.D., M.S., as  
Chairman of the Department of  
Psychiatry and Behavioral  
Sciences at Nassau Medical  
Center,  
Respondent,  
For an Order Authorizing the  
Involuntary Treatment of  
Catherine F. (Anonymous), a  
Patient at Nassau University  
Medical Center,  
Appellant.

Appeal transferred without costs, by the  
Court sua sponte, to the Appellate  
Division, Second Department, upon the  
ground that a direct appeal does not lie  
when questions other than the constitu-  
tional validity of a statutory provision  
are involved (NY Const, art VI,  
3[b][2], 5[b]; CPLR 5601[b][2]).

2-10 Mo. No. 974  
Phyllis Reich, &c.,  
Respondent,  
v.  
Wolf & Fuhrman, P.C., et al.,  
Appellants.

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

1-10 Mo. No. 973  
In the Matter of Mitchell Schorr,  
Respondent,  
v.  
New York City Department of  
Housing Preservation and  
Development et al.,  
Appellants.

Motions for leave to appeal granted.

1-10 Mo. No. 899  
Andrew J. Spinnell,  
Respondent,  
v.  
Philip Seldon, &c.,  
Appellant.

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

3-11 Mo. No. 976  
William L. Stanley, Jr.,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion for leave to appeal denied.

4-13 Mo. No. 829  
Raymond Swierczynski et al.,  
Appellants,  
v.  
Joan O'Neill et al.,  
Respondents.

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

2-13 Mo. No. 1019  
Pamela Tutrani et al.,  
Appellants,  
v.  
County of Suffolk, et al.,  
Respondents,  
et al.,  
Defendants.

Motion for leave to appeal granted.

2-10 Mo. No. 1030  
Raymond Vega, et al.,  
Appellants,  
v.  
State of New York,  
Respondent.

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

4-13 Mo. No. 983  
Myrna Walker, Respondent,  
v.  
Robert Walker, 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.

Mo. No. 1168  
The People &c., Respondent,  
v.  
Anthony Ware, Appellant.

Motion for assignment of counsel granted and Lynn W.L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1-13 Mo. No. 902  
Christopher White, Jr., &c., Appellant,  
v.  
Mount Saint Michael High School, Respondent.

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

4-10 Mo. No. 906  
Wiggin & Dana LLP, Appellant,  
v.  
City of Buffalo, Respondent.

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

-----  
Edward C. Cosgrove,  
Appellant,  
v.  
City of Buffalo, Respondent.

Mo. No. 1185 SSD 55  
In the Matter of the Claim of  
Frederick Wiley,  
Appellant,  
v.  
City of Watertown Fire Department  
Respondent,  
Workers' Compensation Board,  
Respondent.

Appeal, insofar as taken from the  
Appellate Division order denying  
reconsideration or, in the alternative,  
leave to appeal to this Court, dismissed  
without costs, by the Court sua sponte,  
upon the ground that such order does not  
finally determine the proceeding within  
the meaning of the Constitution; appeal  
otherwise dismissed without costs, by the  
Court sua sponte, upon the ground that  
no substantial constitutional question is  
directly involved.

3-10 Mo. No. 1008  
In the Matter of Chris Williams,  
Appellant,  
v.  
Glenn S. Goord, &c., et al.,  
Respondents.

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

1-13 Mo. No. 940  
Ying-Qi Yang,  
Appellant,  
v.  
Shew-Foo Chin,  
Respondent.

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