

October 13, 2011

**CASES**

1                    No. 238 SSM 30  
Dominic Bonomonte,  
    Appellant,  
    v.  
City of New York,  
    Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative, in a memorandum.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

4                    No. 158  
The People &c.,  
    Respondent,  
    v.  
Nadirah Brown,  
    Appellant.

Order modified by reducing defendant's conviction of assault in the second degree to assault in the third degree and remitting to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

                      No. 173  
The People &c.,  
    Respondent,  
    v.  
Alexander G. Crampe,  
    Appellant.

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

1                    No. 152  
Greenberg, Trager & Herbst, LLP,  
    Appellant,  
    v.  
HSBC Bank USA and Citibank, N.A.,  
    Respondents.  
(And a Third-Party Action.)

Order affirmed, with costs.  
Opinion by Judge Ciparick.  
Chief Judge Lippman and Judges Graffeo, Read, Smith and Jones concur.  
Judge Pigott dissents in part in an opinion.

4                    No. 157  
Alexander Lifson, &c.,  
    Appellant,  
    v.  
City of Syracuse,  
    Defendant,  
Derek Klink,  
    Respondent.

Order, insofar as appealed from, reversed, with costs, amended complaint reinstated as against defendant Derek Klink, and case remitted to Supreme Court, Onondaga County, for further proceedings in accordance with the opinion herein.  
Opinion by Chief Judge Lippman.  
Judges Ciparick, Graffeo, Pigott and Jones concur.  
Judge Smith dissents in an opinion in which Judge Read concurs.

2                    No. 216  
New York and Presbyterian Hospital, &c.,  
    Respondent,  
    v.  
Country Wide Insurance Company,  
    Appellant.

Order reversed, with costs, defendant's motion for summary judgment granted and the complaint dismissed.  
Opinion by Judge Jones.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

3                    No. 159  
The People &c.,  
    Respondent,  
    v.  
Terrance D. Robinson,  
    Appellant.

Order reversed and a new trial ordered, in a memorandum.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2                    No. 174  
The People &c.,  
    Respondent,  
    v.  
Blake Wingate,  
    Appellant.

Order modified by remitting to Supreme Court, Queens County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.

## MOTIONS

3                    Mo. No. 2011-732  
In the Matter of Alethia Ahmed-Parkin-  
Chirco,  
                  Appellant,  
          v.  
New York State Comptroller,  
et al.,  
                  Respondents.

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

1                    Mo. No. 2011-1056  
The People &c.,  
                  Respondent,  
          v.  
Jose Alfaro,  
                  Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2011-783  
American Building Supply Corp.,  
                  Appellant,  
          v.  
Petrocelli Group, Inc.,  
                  Respondent,  
Pollak Associates,  
                  Defendant.

Motion for leave to appeal granted.

2                    Mo. No. 2011-847  
In the Matter of Ramon M. Aquino,  
                  Respondent,  
          v.  
Jaclyn F. Antongiorgi,  
                  Appellant.

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

1 Mo. No. 2011-823  
The People &c.,  
Respondent,  
v.  
Kenneth Archbold,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2011-758  
Rosemary Arcuri, &c.,  
Appellant,  
v.  
Kenneth C. Voigt, et al.,  
Defendants,  
G&S Automotive Repair, Inc.,  
Respondent.

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

1 Mo. No. 2011-1098  
Assured Guaranty (UK) Ltd., &c.,  
Respondent,  
v.  
J. P. Morgan Investment Management Inc.,  
Appellant.

Motion by New York State AFL-CIO et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and 19 copies filed within seven days.

3 Mo. No. 2011-648  
The People &c.,  
Respondent,  
v.  
Harvey Bailey,  
Appellant.

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

1 Mo. No. 2011-818  
In the Matter of Nicolae Calinescu,  
Appellant,  
v.  
State of New York Division of Housing and  
Community Renewal Office of Rent  
Administration,  
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2011-853  
The People &c.,  
Respondent,  
v.  
James Carter,  
Appellant.

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

2 Mo. No. 2011-811  
Byron Castillo,  
Appellant,  
v.  
Amjack Leasing Corp. et al.,  
Respondents.

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

2 Mo. No. 2011-717  
In the Matter of Jessica D. (Anonymous).

Motion for leave to appeal denied.

Coalition for Hispanic Family Services, et al.,  
Respondents;  
Florence D. (Anonymous),  
Appellant;  
et al.,  
Respondent.  
(And Other Proceedings.)

3 Mo. No. 2011-848  
In the Matter of Gary DeFilippo,  
Appellant,  
v.  
Brian Fischer, &c. et al.,  
Respondents.

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

2                    Mo. No. 2011-834  
In the Matter of Debra Eirand-Herskowitz,  
                         Respondent,  
                         v.  
Mt. Carmel Cemetery Association,  
                         Respondent,  
Jean Herskowitz, et al.,  
                         Appellants.

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

4                    Mo. No. 2011-781  
In the Matter of Jaleel E.F.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]).

Erie County Department of Social Services,  
                         Respondent;  
Cheryl S. (Deceased),  
                         Respondent,  
Ernest F.,  
                         Appellant.

4                    Mo. No. 2011-854  
General Star National Insurance Company,  
                         Respondent,  
                         v.  
Niagara Frontier Transit Metro System, Inc.,  
                         Appellant.

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

4                    Mo. No. 2011-795  
In the Matter of Angel L.H.

Motion for leave to appeal denied.

Chautauqua County Department of Social  
Services,  
                         Respondent;  
Melissa H.,  
                         Appellant;  
Matthew H.,  
                         Respondent.

4                    Mo. No. 2011-1069  
The People &c.,  
    Respondent,  
    v.  
George Harris,  
    Appellant.

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

3                    Mo. No. 2011-1061  
Ayube Hussein, as Parent of a Student in the  
Albany City School District, et al.,  
    Respondents,  
    v.  
State of New York,  
    Appellant.

Motion by New York State United Teachers 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 19 copies filed within seven days.

3                    Mo. No. 2011-725  
In the Matter of Crystal JJ.  
et al., &c.  
  
Tompkins County Department of Social  
Services,  
    Respondent;  
Sarah KK.,  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2011-750  
Kel-Tech Construction, Inc.,  
    Appellant,  
    v.  
New York City Housing Authority,  
    Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2011-742  
In the Matter of Barry Leibowicz,  
                          Appellant,  
                          v.  
New York State Department of Taxation and  
Finance, et al.,  
                          Respondents.

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

3                    Mo. No. 2011-843  
In the Matter of Lamarr LL.  
et al., &c.  
  
Schenectady County Department of Social  
Services,  
                          Respondent;  
Loreal MM.,  
                          Appellant.  
(And Another Related Proceeding.)

Motion for leave to appeal denied.

2                    Mo. No. 2011-702  
In the Matter of Miguel M. (Anonymous),  
&c.,  
                          Appellant;  
Charles Barron, &c.,  
                          Respondent.

Motion for reargument denied.

4                    Mo. No. 2011-1047  
The People &c.,  
                          Respondent,  
                          v.  
Donyell J. McKenzie,  
                          Appellant.

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 appellant on the appeal herein.

1 Mo. No. 2011-827  
Francisca Montan,  
Appellant,  
v.  
Saint Vincent's Catholic Medical Center, et  
al.,  
Defendants,  
St. Vincent's Midtown Hospital, 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.

2 Mo. No. 2011-802  
In the Matter of Reinaldo Morales,  
Appellant,  
v.  
Lori Currier Woods, &c.,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2011-809  
The People &c.,  
Respondent,  
v.  
Jorge Pagan,  
Appellant.

Motion to vacate this Court's July 6, 2011 dismissal  
order granted.

2 Mo. No. 2011-800  
In the Matter of Pauline Petulla,  
Respondent,  
v.  
Vincent Petulla, et al.,  
Respondents,  
Dolores Moscato,  
Appellant.

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. 2011-806  
Qamrul (Cam) Rahman,  
Respondent,  
v.  
Monoara Sultana,  
Appellant.

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

1                    Mo. No. 2011-1073  
The People &c.,  
    Appellant-Respondent,  
    v.  
Louis Riley,  
    Respondent-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 respondent-appellant on the appeal herein.

2                    Mo. No. 2011-703  
Richard Ross,  
    Appellant,  
    v.  
County of Suffolk, et al.,  
    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2011-816  
Gina Rudden,  
    Appellant,  
    v.  
Francine Bernstein, et al.,  
    Defendants,  
Kaitlin Smiraldo, et al.,  
    Respondents.

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

2                    Mo. No. 2011-790  
The People &c.,  
    Respondent,  
    v.  
Gary Ruiz,  
    Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2011-778  
In the Matter Ethan S.  
  
Tarra C. et al.,  
    Respondents;  
Jason S.,  
    Appellant.  
(And Another Proceeding.)

Motion for leave to appeal denied.

2                    Mo. No. 2011-841  
In the Matter of Marlene Scher &c.,  
                  Appellant,  
          v.  
New York State Department of Housing and  
Community Renewal  
et al.,  
          Respondents;  
Georgetown Unsold Shares, LLC,  
          Intervenor-Respondent.

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

1                    Mo. No. 2011-719  
Shelton Stewart,  
                  Respondent,  
          v.  
New York City Transit Authority,  
          Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2011-1078  
The People &c.,  
                  Respondent,  
          v.  
Brandon Stilts,  
          Appellant.

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

3                    Mo. No. 2011-828  
The People &c. ex rel. Anthony Tislon,  
                  Appellant,  
          v.  
David Rock, &c.,  
          Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2011-1095  
Jose Luis Toledo, &c.,  
                  Respondent,  
          v.  
Iglesia Ni Christo,  
          Appellant.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

2                    Mo. No. 2011-793  
Dickon Tong,  
    Appellant,  
    v.  
Target, Inc. et al.,  
    Respondents.

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

2                    Mo. No. 2011-785  
Trump on the Ocean, LLC,  
    Appellant,  
    v.  
Carol Ash, et al.,  
    Respondents.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution.  
Motion for a stay dismissed as academic.

4                    Mo. No. 2011-810  
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.

1                    Mo. No. 2011-1076  
The People &c.,  
    Respondent,  
    v.  
Western Express International Inc., et al.,  
    Defendants,  
Vadim Vassilenko,  
    Appellant.

Motion for assignment of counsel granted and Marianne Karas, Esq., PO Box 277, Armonk, New York 10504 assigned as counsel to appellant Vadim Vassilenko on the appeal herein.

3                    Mo. No. 2011-1086  
In the Matter of Hailey ZZ., &c.

Motion for poor person relief granted.

Tompkins County Department of Social  
Services,  
    Respondent;  
Ricky ZZ.,  
    Appellant.