

October 18, 2011

CASES

1 No. 170
Gloria Doomes, &c.,
 Appellant,
 v.
Best Transit Corp., et al.,
 Defendants,
Warrick Industries, Inc., &c.,
 Respondent.

Ana Jiminian, &c.,
 Appellant,
 v.
Best Transit Corp., et al.,
 Defendants,
Warrick Industries, Inc., &c.,
 Respondent.

Kelli Rivera,
 Appellant,
 v.
Best Transit Corp., et al.,
 Defendants,
Warrick Industries, Inc., &c.,
 Respondent.

3 No. 239 SSM 33
Dallas M. Grove,
 Appellant,
 v.
Cornell University, et al.,
 Respondents.

Order reversed, with costs, and case remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that court.
Opinion by Judge Jones.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read and Smith concur.
Judge Pigott dissents in part and votes to affirm in an opinion.

On review of submissions pursuant to section 500.11 of the Rules, judgment appealed from and order of the Appellate Division brought up for review modified, without costs, by denying defendants' motion for summary judgment on plaintiff's Labor Law § 240(1) claim and, as so modified, affirmed, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

1 No. 156
The People &c.,
 Respondent,
 v.
Luis Parada,
 Appellant.

Order affirmed.
Opinion by Judge Read.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Pigott and Jones concur.
Judge Smith concurs in result in an opinion.

2 No. 162
The People &c.,
 Respondent,
 v.
Christopher Porco,
 Appellant.

Order affirmed, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Read,
Smith, Pigott and Jones concur.
Judge Graffeo took no part.

1 No. 171
The People &c.,
 Respondent,
 v.
Isidro Rodriguez,
 Appellant.

Order affirmed.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo, Read, Smith, Pigott and
Jones concur.

1 No. 155
The People &c.,
 Appellant,
 v.
Angel Rosario,
 Respondent.

Order affirmed.
Opinion by Judge Read.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Pigott and Jones concur.
Judge Smith dissents and votes to reverse in an
opinion.

1 No. 154
In the Matter of Carlos Rueda, M.D.,
Chairman, Department of Psychiatry,
Montefiore North Medical Center,
 Respondent,
 v.
Charmaine D.,
 Appellant.

Order affirmed, without costs.
Opinion by Judge Smith.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Pigott and Jones concur.

1 No. 153
Carmen Valdez, Individually and as Mother
and Natural Guardian of Ceasar Marti and
Another,
 Appellant,
 v.
The City of New York et al.,
 Respondents.

Order affirmed, with costs.
Opinion by Judge Graffeo.
Judges Ciparick, Read, Smith and Pigott concur.
Chief Judge Lippman and Judge Jones dissent and
vote to reverse in separate dissenting opinions.

MOTIONS

1 Mo. No. 2011-833
In the Matter of 936 Second Avenue, L.P.,
 Appellant,
 v.
Second Corporate Development, Co., Inc., et
al.,
 Respondents.

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

4 Mo. No. 2011-753
In the Matter of Shawn A., Jr., et al.

Erie County Department of Social Services,
 Respondent;
Milisa C.B.,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2011-776
James V. Aquavella, &c., et al.,
 Appellants,
 v.
Ralph S. Viola, &c.,
 Respondent.

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

2 Mo. No. 2011-953
In the Matter of Jesus Berrios,
 Appellant,
 v.
Board of Education of Yonkers City School
District, et al.,
 Respondents.

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

3 Mo. No. 2011-863
In the Matter of Johnny Bunting,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

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

1 Mo. No. 2011-924
The People &c.,
 Respondent,
 v.
Tobie Coleman,
 Appellant.

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

2 Mo. No. 2011-957
In the Matter of Gale Lee Davis,
 Appellant,
 v.
City of New York Comptroller,
et al.,
 Respondents.

Motion for reargument of motion for leave to appeal
denied.

2 Mo. No. 2011-814
Joseph J. Delanoy, Jr., et al.,
 Respondents,
 v.
City of White Plains et al.,
 Appellants,
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. 2011-757
Louise Digiulio, &c.,
 Appellant,
 v.
Gran, Inc., &c., et al.,
 Respondents.

Motion for reargument denied.

1 Mo. No. 2011-893
Luisa C. Esposito,
 Respondent,
 v.
Allen H. Isaac, &c.,
 Appellant,
et al.,
 Defendants.

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

2 Mo. No. 2011-859
The People &c.,
 Respondent,
 v.
Richard Flowers,
 Appellant.

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

1 Mo. No. 2011-856
Skip Funt,
 Appellant,
 v.
Human Resources Administration of the City
of New York,
 Respondent.

Motion for reargument of motion for leave to appeal denied.

2 SSD 43
In the Matter of Bjorn Holubar,
 Appellant,
 v.
Karen O'Connor, &c., et al.,
 Respondents.

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

1 Mo. No. 2011-812
Hudson Valley Federal Credit Union,
Appellant,
v.
New York State Department of Taxation and
Finance, et al.,
Respondents.

Motion for leave to appeal granted.

1 Mo. No. 2011-916
Hudson Valley Federal Credit Union,
Appellant,
v.
New York State Department of Taxation and
Finance, et al.,
Respondents.

Motion by the United States of America for leave to
file a memorandum of law amicus curiae on the
motion for leave to appeal herein granted and the
memorandum of law is accepted as filed, and for
leave to file a brief amicus curiae on the appeal
herein granted, three copies of the brief to be served
and an original and 19 copies filed within 30 days.

3 Mo. No. 2011-862
In the Matter of Scott Irwin,
Appellant,
v.
Brian Fischer, &c.,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2011-825
The People &c.,
Respondent,
v.
Kevin T. Johnson,
Appellant.

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

1 Mo. No. 2011-868
Gurumurthy Kalyanaram,
Appellant,
v.
New York Institute of Technology,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-857
Deborah Keller,
 Respondent,
 v.
Tom McDonald,
 Appellant.

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

1 Mo. No. 2011-888
Eldene C. King,
 Appellant,
 v.
New York City Health and Hospitals
Corporation,
 Respondent.

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

4 Mo. No. 2011-819
In the Matter of Randy M. Krajkowski,
 Respondent,
 v.
Cynthia A. Bianco, &c., et al.,
Appellants.

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

2 Mo. No. 2011-878
Mary Loughlin,
 Appellant,
 v.
Town of North Hempstead,
 Respondent.

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

2 Mo. No. 2011-851
In the Matter of Ronald Marchand, Jr., et al.,
 Appellants,
 v.
New York State Department of
Environmental Conservation,
et al.,
 Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2011-761
In the Matter of Debra McCarthy,
 Appellant,
 v.
Michael McCarthy,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-849
Roger McCormick et al.,
 Appellants,
 v.
William Favreau et al.,
 Respondents.

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

2 Mo. No. 2011-926
Gregory McCoy,
 Appellant,
 v.
Transport International Pool, Inc., &c.,
 Respondent.

Motion for reargument of motion for leave to appeal
denied.

4 Mo. No. 2011-839
Frank McGuire, et al.,
 Plaintiffs,
McGuire Children, LLC,
 Respondent,
 v.
William L. Huntress, et al.,
 Appellants.

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

2 Mo. No. 2011-918
Fortune Mizrachi,
Respondent,
v.
Danny Mizrachi,
Appellant.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2011-787
Jahporanae Moore &c., et al.,
Appellants,
v.
The City of New York, et al.,
Respondents.

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

1 Mo. No. 2011-773
Oddo Asset Management,
Appellant,
v.
Barclays Bank PLC, et al.,
Respondents,
Solent Capital Partners, LLP,
et al.,
Defendants.

Motion for leave to appeal granted.

4 Mo. No. 2011-866
In the Matter of Pietro Russo,
Respondent,
v.
Nicole Carmel,
Appellant.

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

2 Mo. No. 2011-822
The People &c.,
Respondent,
v.
Lorenzo Scott,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2011-877
Sheila Properties, Inc.,
 Respondent,
 v.
A Real Good Plumber, Inc.,
et al.,
 Defendants,
Elizabeth Kelleher,
 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.

2 Mo. No. 2011-966
Sheila Properties, Inc.,
 Respondent,
 v.
A Real Good Plumber, Inc.,
et al.,
 Defendants,
Elizabeth Kelleher,
 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.

Elizabeth Kelleher,
 Appellant,
 v.
Sheila Properties, Inc.,
 Respondent,
et al.,
 Defendants.

2 Mo. No. 2011-1080
Sheila Properties, Inc.,
 Respondent,
 v.
A Real Good Plumber, Inc.,
et al.,
 Defendants,
Elizabeth Kelleher,
 Appellant.

Elizabeth Kelleher,
 Appellant,
 v.
Sheila Properties, Inc.,
 Respondent,
et al.,
 Defendants.

4 Mo. No. 2011-891
John T. Siwula,
 Appellant,
 v.
Town of Hornellsville et al.,
 Respondents.

3 SSD 42
In the Matter of Jennifer Sniffen,
 Respondent,
 v.
Arthur Weygant,
 Appellant.

(And Two Other Related Proceedings.)

Motion for a stay dismissed as academic.

Motion for reargument of motion for leave to appeal denied.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the two-justice dissent at the Appellate Division is not on a question of law (CPLR 5601[a]).

4 Mo. No. 2011-1002
The People &c.,
Respondent,
v.
Michael J. Solomon,
Appellant.

Motion to vacate this Court's August 11, 2011
dismissal order granted.

4 Mo. No. 2011-858
The People &c.,
Respondent,
v.
Eric Stephens,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2011-792
Thelen LLP,
Respondent,
v.
Omni Contracting Co., Inc.,
Appellant.

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

1 Mo. No. 2011-804
Carlton Tucker, et al.,
Appellants,
v.
The City of New York,
Respondent.

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

2 Mo. No. 2011-699
In the Matter of Town of Wallkill,
Respondent,
v.
Civil Service Employees Association, Inc.
(Local 1000, AFSCME, AFL-CIO, Town of
Wallkill Police Department Unit, Orange
County Local 836), et al.,
Appellants.

Motion for leave to appeal granted.

2 Mo. No. 2011-769
In the Matter of Town of Wallkill,
 Respondent,
 v.
Civil Service Employees Association, Inc.
(Local 1000, AFSCME, AFL-CIO, Town of
Wallkill Police Department Unit, Orange
County Local 836), et al.,
 Appellants.

Motion by the New York State Public Employment Relations Board for leave to file a brief amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed, and for leave to file a brief amicus curiae on the appeal herein granted, three copies of the brief to be served and an original and 19 copies filed within 30 days.

4 Mo. No. 2011-796
The People &c. ex rel. Elbert Welch,
 Appellant,
 v.
James Hessel, &c.,
 Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Motion for leave to appeal denied. Judge Pigott took no part.

2 Mo. No. 2011-687
In the Matter of Lorraine Wetzel, &c.,
 Appellant,
 v.
Town of Orangetown, et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that dismissed the appeal from Supreme Court's order denying appellant's motion for reargument, dismissed upon the ground that such portion of the order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied. Chief Judge Lippman took no part.

2 Mo. No. 2011-765
Denice LaBarca Zito,
 Appellant,
 v.
Edward Jastremski, &c., et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed Supreme Court's denial of appellant's motion to renew, 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.