

October 25, 2011

CASES

1 No. 149
The People &c.,
 Respondent,
 v.
Dondi Credle,
 Appellant.

Order reversed and indictment dismissed with leave to the People to apply for an order permitting resubmission of the charges to another grand jury. Opinion by Chief Judge Lippman. Judges Ciparick, Graffeo and Jones concur. Judge Pigott dissents and votes to affirm in an opinion in which Judges Read and Smith concur.

1 No. 150
The People &c.,
 Appellant,
 v.
Makeda Davis,
 Respondent.

Order reversed and case remitted to the Appellate Division, First Department, for consideration of the facts and issues raised but not determined on the appeal to that court. Opinion by Judge Pigott. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur, Chief Judge Lippman in a separate concurring opinion in which Judges Ciparick and Jones concur.

2 No. 161
The People &c.,
 Respondent,
 v.
Damian Gardner,
 Appellant.

Order reversed and case remitted to the Appellate Division, Second Department, for consideration of the merits of the appeal taken to that court. Opinion by Judge Jones. Chief Judge Lippman and Judges Ciparick and Smith concur. Judge Read concurs in result in an opinion in which Judges Graffeo and Pigott concur.

4 No. 241 SSM 36
Deborah I. Gravius,
 Appellant,
 v.
County of Erie,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, appeal dismissed, with costs, upon the ground that the two-justice dissent at the Appellate Division is not on a question of law (see CPLR 5601[a]).
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

1 No. 151
The People &c.,
 Appellant,
 v.
Fayola McIntosh,
 Respondent.

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

3 No. 163
In the Matter of Schenectady County Society
for the Prevention of Cruelty to Animals, Inc.,
 Respondent,
 v.
Richard P. Mills, as Commissioner of
Education of the State of New York,
 Appellant.

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

4 No. 240 SSM 34
John F. Smith and Lisa Smith,
 Respondents,
 v.
Marijane Reilly,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, defendant's motion for summary judgment dismissing the complaint granted, and certified question answered in the negative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2 No. 160
The People &c.,
 Respondent,
 v.
Carlos Ventura,
 Appellant.

Order reversed and case remitted to the Appellate Division, Second Department, for consideration of the merits of the appeal taken to that court. Opinion by Judge Jones. Chief Judge Lippman and Judges Ciparick and Smith concur. Judge Read dissents and votes to affirm in an opinion in which Judges Graffeo and Pigott concur.

1 No. 168
Antoni Wilinski, et al.,
 Respondents-Appellants,
 v.
334 East 92nd Housing Development Fund
Corp., et al.,
 Appellants-Respondents.

Order modified, without costs, in accordance with the opinion herein and, as so modified, affirmed, and certified questions answered in the negative. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Smith and Jones concur. Judge Pigott dissents and votes to affirm in an opinion in which Judges Graffeo and Read concur.

MOTIONS

2 Mo. No. 2011-831
In the Matter of Christopher Bagan,
Appellant,
v.
James F. Reitz, &c., et al.,
Respondents.

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

3 Mo. No. 2011-931
In the Matter of William R. Baker,
Appellant,
v.
Tiffany M. Spurgeon,
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.

 SSD 47
George J. Beraka, M.D.,
Respondent,
v.
Danielle Biton and Crystal Biton,
Appellants.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies in this civil action from the order of the Appellate Term (see NY Const, art VI, § 3[b]; CPLR 5601).

3 Mo. No. 2011-915
In the Matter of Nicholas Castelli,
Respondent,
v.
NRG et al.,
Appellants,
Special Disability Fund,
Respondent.
Workers' Compensation Board,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-911
In the Matter of Leon CC., &c.

Broome County Department of Social
Services,
Respondent;
Larry CC.,
Appellant.
(And Another Related Proceeding).

Motion for leave to appeal denied.

2 Mo. No. 2011-930
In the Matter of D&D Mason Contractors,
Inc., et al.,
Appellants,
v.
M. Patricia Smith, &c., et al.,
Respondents.

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

4 Mo. No. 2011-976
The People &c.,
Respondent,
v.
John Daniels,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2011-989
In the Matter of Michael Diederich, Jr.,
Individually and on Behalf of all Taxpayers of
the County of Rockland,
Appellant,
et al.,
Petitioner,
v.
Christopher St. Lawrence,
Defendant,
Holland & Knight, LLP, et al.,
Respondents.

Motion for reconsideration of this Court's June 28,
2011 dismissal order denied.
Motion, insofar as it seeks leave to appeal from the
Appellate Division order denying reargument or, in
the alternative, leave to appeal to this Court,
dismissed upon the ground that such order does not
finally determine the proceeding within the meaning
of the Constitution; motion for leave to appeal
otherwise denied.

2 Mo. No. 2011-927
Kenneth Entler, &c.,
 Appellant,
 v.
Eric Koch, et al.,
 Defendants,
Boy Scouts of America,
 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.

1 Mo. No. 2011-889
Betty Floyd,
 Appellant,
 v.
State of New York Division of Human
Rights,
 Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601). Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.

3 Mo. No. 2011-975
In the Matter of Maria Elena Fodera,
 Appellant,
 v.
Richard F. Daines, &c.,
 Respondent.

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

4 SSD 45
Glacial Aggregates LLC,
 Respondent,
 v.
Town of Yorkshire,
 Appellant.

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

2 Mo. No. 2011-895
God's Battalion of Prayer Pentecostal Church,
Inc.,
 Appellant,
 v.
Larry B. Hollander, et al.,
 Respondents.

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

1 Mo. No. 2011-882
Edwin Gomez,
 Respondent,
 v.
The New York City Police Department et al.,
 Appellants,
Police Officer William Morales,
 Defendant.

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

4 Mo. No. 2011-950
Marlino Gress, et al.,
 Respondents,
 v.
Byron Brown, &c. et al.,
 Respondents,
Buffalo Fiscal Stability Authority,
 Appellant.

Motion for leave to appeal granted.

3 Mo. No. 2011-898
In the Matter of Griffiss Local Development
Corporation,
 Appellant,
 v.
State of New York Authority Budget Office et
al.,
 Respondents.

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

1 Mo. No. 2011-881
GS Plásticos Limitada,
 Appellant,
 v.
Bureau Veritas,
 Respondent,
Bureau Veritas Consumer Products Services,
Inc.,
 Defendant.

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

2 Mo. No. 2011-1033
The People &c.,
 Respondent,
 v.
Feoid Haffiz,
 Appellant.

Motion to vacate this Court's August 25, 2011 dismissal order granted.

2 Mo. No. 2011-943
Insurance Company of Greater New York,
 Appellant,
 v.
Clermont Armory, LLC,
 Respondent,
et al.,
 Defendants.
(And Third-Party Actions.)

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

1 Mo. No. 2011-909
Jade Realty LLC,
 Respondent,
 v.
Citigroup Commercial Mortgage Trust 2005-
EMG, et al.,
 Appellants,
et al.,
 Defendant.

Motion for leave to appeal granted.

1 Mo. No. 2011-672
In the Matter of John Jay College of Criminal
Justice of the City University of New York.

River Center LLC, et al.,
Appellants,

v.

The Dormitory Authority of the State of New
York,
Respondent.

Motion for reargument of motion for leave to appeal
denied.

3 SSD 46
In the Matter of Kathleen Karlsberg,
Appellant,

v.

Tax Appeals Tribunal of the State of New
York, et al.,
Respondents.

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

1 Mo. No. 2011-1001
The People &c.,
Respondent,

v.

Saleem Khan,
Appellant.

Motion to strike portions of respondent's brief
denied.

2 Mo. No. 2011-894
In the Matter of Paul Kosowski, et al.,
Appellants,

v.

Daniel F. Donovan, Jr., et al.,
Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2011-923
Lancer Insurance Company,
 Appellant,
 v.
Marine Motor Sales, Inc., et al.,
 Defendants,
Travelers Insurance Group,
 Respondent.

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

4 Mo. No. 2011-907
Kai Lin,
 Appellant,
 v.
Strong Health, et al.,
 Respondents.
(And Another Action.)

Motion, insofar as it seeks leave to appeal from the Appellate Division order that modified Supreme Court's order settling the record on appeal, dismissed upon the ground that such order does not finally determine the actions within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2 Mo. No. 2011-885
Mahon, Mahon, Kerins & O'Brien, LLC,
 Respondent,
 v.
David Moskoff, &c.,
 Appellant,
et al.,
 Defendants.

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

2 Mo. No. 2011-945
In the Matter of Tatiana Mamantov,
 Appellant,
 v.
George Mamantov,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2011-932
James L. Melcher,
 Appellant,
 v.
Apollo Medical Fund Management L.L.C. et
al.,
 Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2011-925
Merchants Mutual Insurance Company,
 Plaintiff,
 v.
Rutgers Casualty Insurance Company,
 Appellant,
Tanachion Electrical Contracting, Inc.,
 Respondent.

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

2 Mo. No. 2011-937
Herman Morris, &c.,
 Appellant,
 v.
Malcolm Louis Adams, et al.,
 Respondents.

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

3 Mo. No. 2011-971
In the Matter of Lisa Pantina-Bott,
 Appellant,
 v.
New York State Comptroller
et al.,
 Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2011-840
New York State Assemblyman Adam Clayton
Powell, IV, et al.,
Appellants,
v.
City of New York, et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2011-829
James Sanders,
Respondent,
v.
New York City Transit Authority, &c., et al.,
Appellants.

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

1 Mo. No. 2011-964
Marko S. &c.,
Respondent,
v.
Heather S. &c.,
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.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2011-870
In the Matter of Robert M. Scarano, Jr.,
Appellant,
v.
The City of New York, et al.,
Respondents.

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.

1 Mo. No. 2011-934
Sona Shah,
Appellant,
v.
Wilco Systems, Inc.,
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.

3 Mo. No. 2011-958
In the Matter of Aurel Smith,
 Appellant,
 v.
Daniel Martuscello Jr., &c.,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-908
Sharon Solis,
 Appellant,
 v.
Kristin Silvagni,
 Respondent.

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

1 Mo. No. 2011-959
In the Matter of Urban Justice Center,
 Appellant,
 v.
New York City Clerk,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2011-952
Weaver Street Properties, LLC,
 Appellant,
 v.
Cold Stone Creamery, Inc.,
 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.

3 Mo. No. 2011-883
In the Matter of Joseph M. Wunderlich,
 Appellant,
 v.
New York State Education Department,
Committee on the Professions,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-928
In the Matter of Anthony WW.
et al. &c.

St. Lawrence County Department of Social
Services,
 Appellant,
Michael WW.,
 Respondent.

In the Matter of Anthony WW.
et al. &c.

St. Lawrence County Department of Social
Services,
 Appellant,
Karen WW.,
 Respondent.

3 Mo. No. 2011-955
In the Matter of Thomas X.
et al., &c.

Broome County Department of Social
Services,
 Respondent;
Megan X.,
 Respondent;
Wayne RR.,
 Appellant.
(And Other Proceedings.)

Motions for leave to appeal denied.
Motions for a stay dismissed as academic.

Motion for leave to appeal denied.