

December 18, 2012

CASES

3 No. 87
In the Matter of EchoStar Satellite
Corporation,
 Appellant,
 v.
Tax Appeals Tribunal of the State of New
York et al.,
 Respondents.

Judgment reversed, with costs, determination of
respondent Tax Appeals Tribunal annulled, and
matter remitted to the Appellate Division, Third
Department, with directions to remand to respondent
Tax Appeals Tribunal for further proceedings in
accordance with the opinion herein.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Ciparick, Read,
Smith and Pigott concur.

1 No. 205
The People &c.,
 Appellant,
 v.
Miguel Garcia,
 Respondent.

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

1 No. 191
IRB-Brasil Resseguros, S.A.,
 Respondent,
 v.
Inepar Investments, S.A.,
 Defendant,
Inepar S.A. Industria e Construcoes,
 Appellant.

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

1 No. 190
The People &c.,
 Respondent,
 v,
Hector Martinez,
 Appellant.

Order modified by vacating defendant's conviction of depraved indifference murder, dismissing the count of the indictment charging depraved indifference murder, and remitting to Supreme Court, New York County, for resentencing and, as so modified, affirmed, with leave to the People, if so advised, to present a charge of manslaughter in the first degree to a new grand jury, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read and Smith concur, Judge Smith in a separate opinion.
Judge Pigott dissents in an opinion.

4 No. 225
The People &c.,
 Respondent,
 v.
Calvin Mays,
 Appellant.

Order affirmed, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

4 No. 241 SSM 43
Michel D. Tyson,
 Appellant,
 v.
Lawrence Nazarian,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order modified, without costs, by denying defendant's motion for summary judgment 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 and Pigott concur.

MOTIONS

1 Mo. No. 2012-1071
112 West 34th Street Associates, LLC,
Respondent,
v.
112-1400 Trade Properties LLC,
Appellant.

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

1 Mo. No. 2012-1096
247 East 32nd LLC, et al.,
Respondents,
v.
Katherine Gasparich,
Appellant.

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

3 Mo. No. 2012-1082
In the Matter of Jerrick Allison,
Appellant,
v.
Albert Prack, &c.,
Respondent.

Motion, insofar as it seeks leave to appeal from the Appellate Division order of affirmance, dismissed as untimely (see CPLR 5513[b]; Eaton v State of New York, 76 NY2d 824 [1990]); motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution. Motion for poor person relief dismissed as academic.

1 Mo. No. 2012-1086
Alson Alston,
Appellant,
v.
New York City Commission on Human Rights, et al.,
Respondents.

Motion for reargument of motion for leave to appeal denied.

4 Mo. No. 2012-1075
The People &c. ex rel. Andrique Baron,
 Appellant,
 v.
New York State Department of Correctional
Services et al.,
 Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2012-1065
The People &c.,
 Respondent,
 v.
Kyle Birch,
 Appellant.

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

2 Mo. No. 2012-1132
In the Matter of Mario Blakeney,
 Respondent,
 v.
Lavonne Blakeney,
 Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

2 Mo. No. 2012-1142
In the Matter of Eugene Chmura, &c.

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

Grievance Committee for the Second,
Eleventh and Thirteenth Judicial Districts,
 Respondent;
Eugene Chmura,
 Appellant.

1 Mo. No. 2012-1084
In the Matter of Ta Aisha H., &c.

Motion for leave to appeal denied.

Terrence H.,
 Appellant,
Patrice J.,
 Respondent,
Administration for Children's Services,
 Respondent.

4 Mo. No. 2012-1103
The People &c.,
 Respondent,
 v.
Jason L. Hays,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2012-1067
In the Matter of Patricia Keane,
 Appellant,
 v.
Commissioner of Labor,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2012-1100
In the Matter of Frances M.,
 Appellant,
 v.
Jorge M.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2012-1072
In the Matter of Jill Mongelluzzo,
 Respondent,
 v.
Michael Sondgeroth,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2012-1087
In the Matter of Navillus Tile, Inc., &c.,
Respondent,
v.
LC Main, LLC,
Appellant.

Motion for leave to appeal granted.

1 Mo. No. 2012-1151
In the Matter of The New York County
Lawyers' Association,
et al.,
Appellants,
The New York Criminal Bar Association,
Inc., et al.,
Intervenors-Appellants,
v.
Michael R. Bloomberg, &c.,
et al.,
Respondents,
The Legal Aid Society of New York,
Intervenor-Respondent.

Motion by The New York County Lawyers'
Association, et al. for reargument denied.

1 Mo. No. 2012-1204
In the Matter of The New York County
Lawyers' Association,
et al.,
Appellants,
The New York Criminal Bar Association,
Inc., et al.,
Intervenors-Appellants,
v.
Michael R. Bloomberg, &c.,
et al.,
Respondents,
The Legal Aid Society of New York,
Intervenor-Respondent.

Motion by The New York Criminal Bar Association,
Inc., et al. for reargument denied.

4 Mo. No. 2012-1077
The People &c.,
 Respondent,
 v.
Luke M. Perrah,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2012-1068
The People &c.,
 Respondent,
 v.
Joseph J. Radage, Jr.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2012-1135
In the Matter of RCN New York
Communications, LLC,
 Respondent,
 v.
The Tax Commission of the City of New
York, et al.,
 Appellants.

Motions for leave to appeal denied.

In the Matter of Level 3 Communications,
LLC,
 Respondent,
 v.
The Tax Commission of the City of New
York, et al.,
 Appellants.

1 Mo. No. 2012-797
The People &c.,
 Appellant-Respondent,
 v.
Louis Riley,
 Respondent-Appellant.

Motion for reargument granted and, upon reargument, the decision of June 28, 2012 adhered to. CPL 470.15 (4) (a) and (b) do not "eliminate the necessity of preservation" in the trial court to challenge legal sufficiency of the evidence on appeal (People v Gray, 86 NY2d 10, 20 [1995]). Moreover, contrary to the contention the People press upon reargument, CPL 470.15 (4) (b) does not alter, for issues of legal sufficiency of the evidence, the well-settled rule that an order reversing or modifying on an unpreserved issue is an exercise of discretion in the interest of justice and not appealable to this Court (CPL 450.90 [2] [a]; see People v Bonilla-Lugo, 85 NY2d 965 and People v Christian, 85 NY2d 965 [decided the same day as People v Gray, supra]). The People's appeal in this case was properly dismissed.

Chief Judge Lippman and Judges Ciparick, Graffeo and Read concur.

Judges Smith and Pigott dissent in part and, upon reargument, vote to retain the People's appeal for the reasons stated in Judge Pigott's dissenting in part opinion of June 28, 2012 and upon the further reason that the modification by the Appellate Division, on an unpreserved issue of legal sufficiency of the evidence, should be deemed to be upon the law (CPL 470.15 [4] [b]) and appealable by the People (CPL 450.90 [2] [a]).

1 Mo. No. 2012-1124
In the Matter of Nyree S., &c.,
 Respondent,
 v.
Gregory C., &c.,
 Appellant.

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

3 Mo. No. 2012-1085
The People &c. ex rel. Michael Aziz Zarif
Shabazz &c.,
 Appellant,
 v.
Jerome J. Richards &c. 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.

2 Mo. No. 2012-1063
Staples the Office Superstore East, Inc.,
 Respondent,
 v.
Flushing Town Center III, L.P.,
 Appellant.

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

2 Mo. No. 2012-1114
Lingfei Sun,
 Appellant,
 v.
City of New York, et al.,
 Defendants,
New York City Health and Hospitals
Corporation, et al.,
 Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2012-1083
In the Matter of Khaliah T.

Lorna T.,
 Appellant,
 v.
Desiree Danielle S.C.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2012-1066
Deepak Trivedi,
 Appellant,
 v.
Robert Golub,
 Defendant,
Flushing Hospital Medical Center,
 Respondent.

Motion for leave to appeal dismissed as untimely
(see CPLR 5513[b]; CPLR 2103[b][2]).
Motion for poor person relief dismissed as academic.

1 Mo. No. 2012-1074
Noel M. Wiederhorn, M.D., &c.,
 Respondent,
 v.
J. Ezra Merkin, et al.,
 Appellants.

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

4 Mo. No. 2012-1070
The People &c. ex rel. Albert Williams,
 Appellant,
 v.
Harold D. Graham, &c.,
 Respondent.

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