

February 16, 2012

CASES

2 No. 12
The People &c.,
 Appellant,
 v.
Alaa Agina,
 Respondent.

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

2 No. 13
The People &c.,
 Respondent,
 v.
Mickey Cass,
 Appellant.

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

4 No. 18
Jennifer D. Martino,
 Respondent,
 v.
Michael A. Stolzman,
 Respondent,
Michael Oliver et al.,
 Appellants.
(Action No. 1.)

Order, insofar as appealed from, reversed, with costs, the Oliver defendants' motion for summary judgment granted, the complaint in Action No. 1 and the amended complaint in Action No. 2 dismissed against them, and the certified question answered in the negative, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Judith A. Rost,
 Respondent,
 v.
Michael A. Stolzman, et al.,
 Respondents,
Michael Oliver et al.,
 Appellants.
(Action No. 2.)

1 No. 5
David Mirvish,
 Appellant,
 v.
Hanno D. Mott, &c., et al.,
 Respondents.

Order reversed, with costs, and order of Surrogate's Court, New York County, reinstated.
Opinion by Judge Read.
Chief Judge Lippman and Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.

2 No. 10
Regional Economic Community Action
Program, Inc.,
 Appellant,
 v.
Enlarged City School District of Middletown,
 Respondent.

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

 No. 28
The People &c.,
 Respondent,
 v.
Howard K. Smith,
 Appellant.

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

3 No. 19
Christine M. Stuto,
 Appellant,
 v.
Gregory G. Kerber et al.,
 Defendants,
William J. McNeary III et al.,
 Respondents.

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

1 No. 4
Minerva Vega,
 Respondent,
 v.
Restani Construction Corp., et al.
 Defendants,
General Fence Corporation,
 Appellant.

Order affirmed, with costs, and certified question
answered in the affirmative.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo and Jones concur.
Judge Smith dissents in an opinion in which Judges
Read and Pigott concur.

MOTIONS

3 Mo. No. 2012-188
In the Matter of Albany Law School et al.,
 Respondents-Appellants,
 v.
New York State Office of Mental Retardation
and Developmental Disabilities et al.,
 Appellants-Respondents.

Motion by National Disability Rights Network, Inc. et al. for leave to appear amici curiae on the appeal herein granted only to the extent that 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. 2011-1375
In the Matter of Ralph Alicea,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2012-155
Maria Auqui, &c., et al.,
 Respondents,
 v.
Seven Thirty One Limited Partnership, et al.,
 Appellants.

Motion by Consolidated Edison Company of New York, Inc. for leave to appear amicus curiae on the appeal herein denied.
Chief Judge Lippman took no part.

4 Mo. No. 2011-1373
In the Matter of Chelsey B.

Erie County Department of Social Services,
 Respondent;
Michael W.,
 Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

2 Mo. No. 2011-1347
The People &c.,
Respondent,
v.
Ronald Bowles,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2012-73
Michael J. Campbell,
Respondent,
v.
Mitchell S. Nusbaum,
Appellant.

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

2 Mo. No. 2012-136
The People &c.,
Respondent,
v.
Mickey Cass,
Appellant.

Motion for removal of assigned counsel and permission to proceed pro se on appeal denied.
Motion to enlarge the record on appeal denied.

1 Mo. No. 2011-1349
Gerald I. Cheves,
Appellant,
v.
The Trustees of Columbia University, &c.,
Respondent.

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

2 Mo. No. 2012-178
The People &c.,
Appellant,
v.
Randolfo Diaz,
Respondent.

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 respondent on the appeal herein.

4 Mo. No. 2012-181
Thomas E. Dombrowski,
 Respondent,
 v.
Raymond W. Bulson,
 Appellant.

Motion by Ganpat Ramcharran for leave to file a brief amicus 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.

1 Mo. No. 2011-1357
Betty Floyd,
 Appellant,
 v.
State of New York Division of Human
Rights,
 Respondent.

Motion for reargument denied.

4 Mo. No. 2011-1377
Glacial Aggregates LLC,
 Respondent,
 v.
Town of Yorkshire,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2011-1279
George Heath,
 Appellant,
 v.
John S. Wojtowicz, et al.,
 Defendants,
Warner Bros. Inc.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2012-84
The People &c.,
Respondent,
v.
Martin Heidgen,
Appellant.
Indictment No. 1910/05

Motion for assignment of counsel granted and Jillian S. Harrington, Esq., PO Box 6006, Monroe Township, NJ 08831 assigned as counsel to the appellant on the appeal herein.
Motion for waiver of strict compliance with the requirements of the Rules of Practice of this Court granted only to the extent that the appeal may be prosecuted upon the original file and an original and nine copies of appellant's brief and appendix.

2 Mo. No. 2012-130
The People &c.,
Respondent,
v.
Martin Heidgen,
Appellant.
Indictment No. 1735/07

Motion for assignment of counsel granted and Jillian S. Harrington, Esq., PO Box 6006, Monroe Township, NJ 08831 assigned as counsel to the appellant on the appeal herein.
Motion for waiver of strict compliance with the requirements of the Rules of Practice of this Court granted only to the extent that the appeal may be prosecuted upon the original file and an original and nine copies of appellant's brief and appendix.

1 Mo. No. 2012-33
In the Matter of Louis Inglese, Jr.,
Appellant,
v.
Robert D. Limandri, &c.,
Respondent.

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

2 Mo. No. 2011-1360
Marcella Jiminez, &c., et al.,
Appellants,
v.
Nazer Hussain Shahid, et al.,
Defendants,
Drenis Properties, LLC,
Respondent.

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

1 Mo. No. 2011-1313
Kathryn Jordan,
Appellant,
v.
Bates Advertising Holdings, Inc., &c.,
Respondent.

Motion for leave to appeal dismissed upon the ground that it does not lie (see CPLR 5602[a]). Chief Judge Lippman took no part.

2 Mo. No. 2012-25
In the Matter of Mercedes K. (Anonymous),
Appellant.

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

4 Mo. No. 2011-1323
In the Matter of Mary P. Kelley,
Appellant,
v.
Katrina Lazore-Camelo, et al.,
Respondents.
(And Another Proceeding.)

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

3 Mo. No. 2012-34
Cary Kittner, &c., et al.,
Appellants,
v.
Eastern Mutual Insurance Company,
Respondent.

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

1 Mo. No. 2011-1346
In the Matter of Chandra LaSonde,
et al.,
 Respondents,
 v.
Norman Seabrook, &c., et al.,
 Appellants.

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

2 Mo. No. 2012-38
In the Matter of Robert P. Lynn III et al.,
 Appellants,
 v.
Planning Board of the Town of East
Hampton,
 Respondent.

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

3 Mo. No. 2012-58
In the Matter of Kenneth Neil,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

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

1 Mo. No. 2012-140
The People &c.,
 Respondent,
 v.
Akieme Nesbitt,
 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 appellant on the appeal
herein.

1 Mo. No. 2012-152
In the Matter of Eyal Ovadia,
et al.,
 Appellants,
 v.
Office of the Industrial Board of Appeals, et
al.,
 Respondents.

Motion by Mason Tenders' District Council of
Greater New York & Long Island 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.

1 Mo. No. 2011-1331
Scott M. Pankoff,
 Appellant,
 v.
Lisa B. Pankoff,
 Respondent.

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 action within the meaning of
the Constitution; motion for leave to appeal
otherwise denied.

1 Mo. No. 2012-72
Scott M. Pankoff,
 Respondent,
 v.
Lisa B. Pankoff,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2012-159
The People &c.,
 Respondent,
 v.
Vincent Rodriguez,
 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 appellant on the appeal
herein.

1 Mo. No. 2012-30
Lewis Small, &c., et al.,
 Appellants,
 v.
Arch Capital Group, Ltd., et al.,
 Respondents.

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

1 Mo. No. 2012-148
The People &c.,
 Respondent,
 v.
Mikal Smith,
 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.

4 Mo. No. 2011-1339
The People &c. ex rel. Brian Snell,
 Appellant,
 v.
Andrea Evans, &c.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2011-1368
Source Enterprises, Inc., et al.,
 Appellants,
 v.
Windels Marx Lane & Mittendorf, LLP,
 Respondent.

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

4 Mo. No. 2011-1253
In the Matter of the Estate of Kevin W.
Stanley, Deceased.

Diane R. Stanley, &c.,
Appellant;
Lawrence J. Mattar, Esq., &c., et al.,
Respondents.

In the Matter of the Estate of Kathleen A.
Stanley, Deceased.

Richard T. Stanley, &c.,
Appellant;
Lawrence J. Mattar, Esq., &c.,
et al.,
Respondents.

4 Mo. No. 2011-1289
The People &c. ex rel. Robert Van Ness,
Appellant,
v.
New York State Department of Correctional
Services,
Respondent.

4 Mo. No. 2011-1338
In the Matter of Nyasia W.

Monroe County Department of Human
Services,
Respondent;
Christine W.,
Appellant.
(And Another Proceeding.)

On the Court's own motion, appeal by Diane R.
Stanley dismissed, without costs, upon the ground
that no substantial constitutional question is directly
involved.

On the Court's own motion, appeal by Richard T.
Stanley dismissed, without costs, upon the ground
that appellant is not a party aggrieved.
Motion for leave to appeal, insofar as made by Diane
R. Stanley, denied; motion for leave to appeal,
insofar as made by Richard T. Stanley, dismissed
upon the ground that said appellant is not a party
aggrieved.

Motion for leave to appeal denied.

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

4 Mo. No. 2011-1342
Ricky D. West, et al.,
 Appellants-Respondents,
 v.
Mark Hogan et al.,
 Respondents-Appellants.
(And a Third-Party Action.)

3 Mo. No. 2011-1318
In the Matter of Carmelita Williams,
 Appellant,
 v.
City of New York,
 Respondent.
Workers' Compensation Board,
 Respondent.

On the Court's own motion, appeal by defendants dismissed, without costs, upon the ground that the Appellate Division order appealed from does not finally determine the action within the meaning of the Constitution.

Motion by plaintiffs for leave to appeal dismissed upon the ground that the Appellate Division order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

Plaintiffs' stipulation to a reduction in damages as an alternative to a new trial is invalid under the circumstances of this case and leaves the action pending for a new trial. Plaintiffs stipulated to the reduced amount in lieu of a new trial on punitive damages, purporting to reserve a right to challenge the stipulated amount of damages on appeal. By operation of law, plaintiffs cannot so provide. A stipulation in such circumstances makes the damage award nonappealable by plaintiffs (see Dudley v Perkins, 235 NY 448, 457 [1923]). Thus, under these circumstances, plaintiffs' stipulation must be rejected. Either a new unconditional stipulation by plaintiffs accepting the reduced damage award must be filed or the parties must proceed to a new trial on punitive damages.

Motion for leave to appeal denied.

3 Mo. No. 2011-1383
In the Matter of Winners Garage, Inc.,
 Appellant,
 v.
Tax Appeals Tribunal of the State of New
York, et al.,
 Respondents.
(And Another Proceeding.)

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

2 Mo. No. 2012-39
Joyce Yabkow,
 Appellant,
 v.
Milton Yabkow, et al.,
 Defendants,
Bank of America, N.A.,
 Respondent.

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