

May 08, 2012

**CASES**

1                    No. 138 SSM 7

The People &c.,  
Respondent,

v.

Alberto de Luna,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein.

Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

4                    No. 144 SSM 16

In the Matter of Damian G. and Madison G.

Oneida County Department of Social  
Services,

Respondent;

Jacquelyn M. et al.,  
Appellants.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and petition dismissed. The determinations of neglect against Jacquelyn M. and Christopher G. are not supported by legally sufficient evidence.

Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

4                    No. 137 SSM 6

The People &c.,  
Respondent,

v.

Tyray Gilliam,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein.

Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

4                    No. 139 SSM 9  
The People &c.,  
    Respondent,  
    v.  
Quintrell Joe,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2                    No. 70  
The People &c.,  
    Respondent,  
    v.  
James D. Kent,  
    Appellant.

Order modified by dismissing counts 1 and 142 of the indictment and remitting to Dutchess County Court for resentencing and, as so modified, affirmed.  
Opinion by Judge Ciparick.  
Chief Judge Lippman and Judges Read, Smith and Jones concur, Judge Smith in a separate concurring opinion.  
Judge Graffeo concurs in result in an opinion in which Judge Pigott concurs.

1                    No. 64  
In the Matter of New York City Health and  
Hospitals Corporation,  
    Respondent,  
    v.  
New York State Commission of Correction,  
    Appellant.

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

4                    No. 140 SSM 15  
The People &c.,  
    Respondent,  
    v.  
Darnell Norton,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

                    No. 81  
The People &c.,  
    Appellant,  
    v.  
Frank Suber,  
    Respondent.

Order reversed and the judgment of the Criminal Court of the City of New York, Kings County, reinstated.  
Opinion by Judge Graffeo.  
Judges Read, Smith, Pigott and Jones concur.  
Judge Ciparick dissents and votes to affirm in an opinion in which Chief Judge Lippman concurs.

1                    No. 82  
Joseph W. Sullivan,  
    Appellant,  
    v.  
William F. Harnisch, et al.,  
    Respondents.

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

## MOTIONS

1                    Mo. No. 2012-330  
In the Matter of Bausch & Lomb Contact  
Lens Solution Product Liability Litigation

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Plaintiffs in the New York Coordinated  
Proceeding,  
                  Appellants,  
                  v.  
Bausch & Lomb,  
                  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. 2012-245  
In the Matter of Lindsay BB.  
et al., &c.

Motions for leave to appeal denied.

Columbia County Department of Social  
Services,  
                  Respondent;  
Ruth BB.,  
                  Appellant.

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In the Matter of Lindsay BB.  
et al., &c.

Columbia County Department of Social  
Services,  
                  Respondent;  
Mark BB.,  
                  Appellant.

Mo. No. 2012-338  
In the Matter of Xavier C.

Oneida County Department of Social  
Services,  
Respondent;  
Louis C.,  
Appellant.

1 Mo. No. 2012-300  
CARI, LLC,  
Appellant,  
v.  
415 Greenwich Fee Owner, LLC,  
et al.,  
Respondents.

2 Mo. No. 2011-1369  
Gaetana Celauro, &c., et al.,  
Appellants,  
v.  
4C Foods Corp., et al.,  
Respondents.

3 Mo. No. 2012-344  
In the Matter of Lindwood Collins,  
Appellant,  
v.  
Brian S. Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.

Motion, insofar as it seeks leave to appeal from that part of the Appellate Division order that affirmed Supreme Court's denial of plaintiff's motion for leave to file a second amended complaint, 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.

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

Motion for leave to appeal denied.

2 Mo. No. 2012-228  
Caroline Commisso, &c.,  
Appellant,  
v.  
Steven G. Orshan, &c., et al.,  
Respondents.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2012-241  
In the Matter of Council of School  
Supervisors and Administrators, Local 1, &c.,  
Appellant,  
v.  
New York City Department of Education, et  
al.,  
Respondents.

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

4 Mo. No. 2012-237  
In the Matter of Eighth Judicial District  
Asbestos Litigation.

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

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Stephen Drabczyk, &c.,  
Respondent,  
v.  
Fisher Controls International, LLC,  
Appellant.

4 Mo. No. 2012-346  
In the Matter of Eighth Judicial District  
Asbestos Litigation.

Motion by Crane Co. 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 dismissed as academic.

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Stephen Drabczyk, &c.,  
Respondent,  
v.  
Fisher Controls International, LLC,  
Appellant.

1 Mo. No. 2012-332

Janine Feaster-Lewis, &c.,  
Appellant,

v.

Ohad Rotenberg, M.D. et al.,  
Defendants.

Mercy Obstetrics and Gynecology, P.C., et  
al.,

Respondents.

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

4 Mo. No. 2012-246

Carl L. Fisher, &c.,  
Appellant,

v.

Kenneth Flanigan, et al.,  
Defendants,

Damon Corporation,  
Respondent.

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

4 SSD 18

Albert G. Fraccola, Jr. and Playtime  
Boutique, Inc.,  
Appellants,

v.

Phyllis Fraccola, Individually and as Sole  
Shareholder of Hydrania, Inc., 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. 2012-296

In the Matter of Azmara N.G.,  
Appellant,

v.

Jesse Stephanie S.,  
Respondent,  
Administration for Children's Services,  
Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2012-334  
In the Matter of William Hamel, et al.,  
                    Appellants,  
                    v.  
Hon. Eric T. Schneiderman,  
&c. et al.,  
                    Respondents.

Motion for leave to appeal denied.

                    Mo. No. 2012-377  
The People &c.,  
                    Respondent,  
                    v.  
Jose Hernandez,  
                    Appellant.

Motion for reargument dismissed as untimely (see  
Rules of Ct of Appeals [22 NYCRR] § 500.24[b]).  
Motion for poor person relief dismissed as academic.

3                    Mo. No. 2012-299  
In the Matter of Martin Hodge,  
                    Appellant,  
                    v.  
James Walsh, &c.,  
                    Respondent.

Motion for leave to appeal denied.

2                    SSD 17  
In the Matter of Oswald Jordan, Deceased.  
  
Victor Jordan,  
                    Appellant,  
                    v.  
Lenna Susannah Jordan,  
                    Respondent.

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

3                    Mo. No. 2012-236  
In the Matter of Jan Kibler,  
                    Appellant,  
                    v.  
New York State Department of Correctional  
Services et al.,  
                    Respondents.

Motion for leave to appeal denied.



3                    SSD 14  
In the Matter of Jerry Lineberger,  
                    Appellant,  
                    v.  
Norman Bezio, as Director of Special  
Housing and Inmate Disciplinary Programs,  
                    Respondent.

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

4                    Mo. No. 2012-268  
Arda Makarchuk,  
                    Respondent-Appellant,  
                    v.  
Edward Makarchuk,  
                    Appellant-Respondent.

Motions for leave to appeal denied.

2                    Mo. No. 2012-172  
The People &c.,  
                    Respondent,  
                    v.  
Adam Melzer,  
                    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2012-288  
Morgan Stanley Capital Partners III, L.P., et  
al.,  
                    Appellants,  
                    v.  
J.C. Flowers II L.P., et al.,  
                    Respondents.

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

1                    Mo. No. 2012-289  
Jacqueline Myers-Skinner,  
    Plaintiff,  
    v.  
The City of New York, et al.,  
    Defendants.

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4201 Webster Corp.,  
    Third-Party Appellant,  
    v.  
ExxonMobil Oil Corporation,  
    Third-Party Respondent.

2                    Mo. No. 2012-359  
Eva Orgel,  
    Appellant,  
    v.  
Stewart Title Insurance Company,  
    Respondent.

4                    Mo. No. 2012-317  
The People &c. ex rel. Michael D. Pierce,  
    Appellant,  
    v.  
Michael F. Hogan, &c.,  
    Respondent.

2                    Mo. No. 2012-272  
Plato General Construction Corp./EMCO  
Tech Construction Corp., JV, LLC,  
    Appellant,  
    v.  
Dormitory Authority of State of New York,  
    Respondent,  
et al.,  
    Defendants.

Motion for leave to appeal denied.

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

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

Motion for leave to appeal denied.

4                    SSD 16  
In the Matter of Paul S. and Robin S., as  
Persons Having Placement of Colleen Y.,  
Kelly Y., Michaela Y., and Bridget Y.,  
Respondents,  
v.  
Rita S. and Ken Y.,  
Appellants.  
(And Five Related Proceedings.)  
(Appeal No. 2)

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the order appealed from  
does not finally determine the proceedings within the  
meaning of the Constitution.

2                    Mo. No. 2012-263  
Nancy Schramm,  
Respondent,  
v.  
Mei Chu Solow,  
Appellant,  
et al.,  
Defendants.

Motion for leave to appeal denied.

3                    Mo. No. 2012-261  
Rashad Scott,  
Appellant,  
v.  
Joseph T. Smith, &c., et al.,  
Respondents.

Motion for leave to appeal denied.

1                   SSD 19  
In the Matter of the State of New York,  
Respondent,  
v.  
Bobby P. (Anonymous),  
Appellant.

Appeal, insofar as taken from that part of the Appellate Division order that affirmed the October 2010 order of Supreme Court, dismissed, without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved; appeal, insofar as taken from the remaining portion of the Appellate Division order, dismissed, without costs, by the Court sua sponte, upon the ground that such portion of the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

2                   Mo. No. 2012-258  
Sunrise Check Cashing and Payroll Services,  
Inc., et al.,  
Respondents,  
v.  
Town of Hempstead, et al.,  
Appellants.

Motion by respondents, insofar as it seeks to dismiss the appeal taken from the Supreme Court judgment entered upon remittal, granted, and the appeal dismissed, without costs, upon the ground that the judgment is not the final paper from which an appeal may be taken (see CPLR 5611); motion, insofar as it seeks to dismiss the appeal taken from the Appellate Division order, denied.

Motion by appellants, insofar as it seeks leave to appeal from the Appellate Division order, denied as unnecessary; motion, insofar as it seeks leave to appeal from the Supreme Court judgment entered upon remittal, dismissed upon the ground that the judgment is not the final paper from which leave to appeal may be sought (see CPLR 5611).

Motion by appellants, treated as one to enlarge the record, denied as unnecessary upon the ground that the material sought to be submitted is subject to judicial notice.

3                    Mo. No. 2012-278  
In the Matter of Errol Thomas,  
                    Appellant,  
                    v.  
A. Del Gaizo, &c.,  
                    Respondent.

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

4                    Mo. No. 2012-310  
Unifund CCR Partners,  
                    Appellant,  
                    v.  
Gerald Youngman,  
                    Respondent.

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

4                    Mo. No. 2012-193  
Utility Services Contracting, Inc.,  
                    Appellant,  
                    v.  
Monroe County Water Authority,  
                    Respondent.

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

2                    Mo. No. 2012-271  
Sherrie Weaver, et al.,  
                    Appellants,  
                    v.  
State of New York,  
                    Respondent.

Motion for leave to appeal denied.

4                    SSD 15  
In the Matter of Bridget Y., Kelly Y., Colleen,  
Y. and Michaela Y.,

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

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Chautauqua County Department of Social  
Services,  
                    Respondent,  
                    v.  
Kenneth M. Y. and Rita S.,  
                    Appellants.  
(Appeal No. 1)

1                    Mo. No. 2012-362  
In the Matter of Yung Brothers Real Estate  
Co., Inc., et al.,  
                    Appellants,  
                    v.  
Robert D. Limandri, &c., et al.,  
                    Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.  
Motion for a stay dismissed as academic.

1                    Mo. No. 2012-383  
Jasmine Zheng et al.,  
                    Appellants,  
                    v.  
The City of New York, et al.,  
                    Respondents.

Motion for leave to appeal granted.  
Motion for poor person relief granted.  
Motion for interim relief denied.