

November 19, 2012

CASES

1                    No. 188  
American Building Supply Corp.,  
    Appellant,  
    v.  
Petrocelli Group, Inc.,  
    Respondent,  
Pollak Associates,  
    Defendant.

Order reversed, with costs, and motion by defendant Petrocelli Group, Inc. for summary judgment denied. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Read and Smith concur. Judge Pigott dissents and votes to affirm in an opinion in which Judge Graffeo concurs.

4                    No. 232 SSM 24  
The People &c.,  
    Respondent,  
    v.  
Tobias Boyland,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed. Whether a protective sweep is justified under particular circumstances involves a mixed question of law and fact. Where, as here, there exists record support for the Appellate Division's resolution of this question, the issue is beyond this Court's further review. Defendant's remaining claims are without merit. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

1                    No. 184  
Douglas Elliman LLC, &c.,  
    Respondent,  
    v.  
Franklin Tretter, et al.,  
    Appellants.

Order affirmed, with costs, and certified question not answered upon the ground that it is unnecessary, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

1                    No. 187  
East Midtown Plaza Housing Company, Inc.,  
    Appellant,  
    v.  
Andrew M. Cuomo, &c., et al.,  
    Respondents,  
East Midtown Plaza Tenant-Cooperator  
Association,  
    Intervenor-Appellant,  
East Midtown Plaza Mitchell-Lama  
Organization,  
    Intervenor-Respondent.

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

2                    No. 192  
J. D'Addario & Company, Inc.,  
    Respondent,  
    v.  
Embassy Industries, Inc.,  
    Appellant.

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

1                    No. 185  
Jade Realty LLC,  
    Respondent,  
    v.  
Citigroup Commercial Mortgage Trust 2005-  
EMG, et al.,  
    Appellants,  
et al.,  
    Defendant.

Judgment appealed from and order of the Appellate  
Division brought up for review, affirmed, with costs,  
in a memorandum.  
Chief Judge Lippman and Judges Ciparick, Graffeo,  
Read and Pigott concur.  
Judge Smith dissents in an opinion.

4                    No. 197  
The People &c.,  
    Respondent,  
    v.  
Samuel Walker,  
    Appellant.

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

## MOTIONS

3 Mo. No. 2012-1094  
The People &c.,  
Respondent,  
v.  
Akiva Daniel Abraham,  
Appellant.

Motion for assignment of counsel granted and Jonathan S. Fishbein, Esq., 35 Fairview Ave., Delmar, NY 12054 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2012-1069  
In the Matter of Perry Bellamy,  
Appellant,  
v.  
New York City Police Department,  
Respondent.

Motion for poor person relief granted.

3 Mo. No. 2012-1048  
The People &c.,  
Respondent,  
v.  
Daniel Boyer,  
Appellant.

Motion for assignment of counsel granted and Mark C. Davison, Esq., c/o Davison Law Office, PLLC, 61 North Main Street, Suite C, Canandaigua, NY 14424 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2012-983  
In the Matter of James E. Canner,  
Appellant,  
v.  
New York State Comptroller  
et al.,  
Respondents.

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

3 Mo. No. 2012-1035  
The People &c.,  
Respondent,  
v.  
Andre Collier,  
Appellant.

Motion for assignment of counsel granted and Claude Castro, Esq., 355 Lexington Ave., Suite 1400, New York, NY 10017 assigned as counsel to the appellant on the appeal herein.

2                    Mo. No. 2012-839  
In the Matter of Jada F. (Anonymous).

Motion for leave to appeal denied.

Suffolk County Department of Social  
Services,  
    Respondent;  
Carolyn F. (Anonymous),  
    Appellant.

2                    Mo. No. 2012-883  
In the Matter of Lawrence G., III.

Motion for leave to appeal denied.

Administration for Children's Services,  
    Respondent;  
Lawrence P.G., Jr.,  
    Appellant;  
Stefanie V.,  
    Respondent.  
(And Other Proceedings.)

                    Mo. No. 2012-1064  
The People &c.,  
    Respondent,  
    v.  
Luis Guaman,  
    Appellant.

Motion for assignment of counsel granted and Steven  
Banks, Esq., The Legal Aid Society, 199 Water  
Street, New York, NY 10038 assigned as counsel to  
the appellant on the appeal herein.

1                    Mo. No. 2012-1109  
The People &c.,  
    Respondent,  
    v.  
Felix Hernandez,  
    Appellant.

Motion for assignment of counsel granted and Steven  
Banks, Esq., The Legal Aid Society, 199 Water  
Street, New York, NY 10038 assigned as counsel to  
the appellant on the appeal herein.

3                    Mo. No. 2012-1060  
Island Park, LLC,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion by New York Farm Bureau 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.

4                    Mo. No. 2012-942  
In the Matter of Keli-Koran Luchey,  
Respondent,  
v.  
Board of Education of City School District of  
the City of Niagara Falls et al.,  
Appellants.

Motion for leave to appeal granted.

2                    Mo. No. 2012-897  
In the Matter of Maher Mukattash,  
Appellant,  
v.  
Human Rights Commission of Westchester  
County, et al.,  
Respondents.

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

3                    Mo. No. 2012-1102  
The People &c.,  
Respondent,  
v.  
Juan Jose Peque, &c.,  
Appellant.

Motion for assignment of counsel granted and Melissa A. Latino, Esq., 45 Hudson Ave., PO Box 1776, Albany, NY 12207 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2012-1116  
The People &c.,  
Respondent,  
v.  
Lance J. Reed.  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

2                    Mo. No. 2012-1059  
The People &c.,  
Respondent,  
v.  
Jose Rodriguez,  
Appellant.

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 appellant on the appeal herein.

4                    Mo. No. 2012-1089  
Timothy A. Roulan,  
Appellant,  
v.  
County of Onondaga and The Assigned  
Counsel Program, Inc.,  
Respondents.

Motion by New York State Defenders Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

4                    Mo. No. 2012-1117  
The People &c.,  
Respondent,  
v.  
Carlos Santiago, Jr.,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

2                    Mo. No. 2012-931  
In the Matter of Solutions Economics, LLC,  
Appellant,  
v.  
Long Island Power Authority,  
Respondent;  
ABB, Inc.,  
Intervenor-Respondent.

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

3                    Mo. No. 2012-1058  
The People &c.,  
Respondent,  
v.  
Denise M. Tallman,  
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.

Mo. No. 2012-1093  
The People &c.,  
Respondent,  
v.  
Cavell Craig Tyrell,  
Appellant.

Motions for assignment of counsel granted and Steven Banks, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2012-1092  
The People &c.,  
Respondent,  
v.  
Carl D. Wells,  
Appellant.

Motion for assignment of counsel granted and Steven Banks, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2012-1001  
In the Matter of Board of Education of  
Yorktown Central School District,  
Appellant,  
v.  
Yorktown Congress of Teachers,  
Respondent.

Motion for leave to appeal denied.