

October 25, 2012

**CASES**

1                    No. 159

The People &c.,  
Respondent,

v.

Jose Alfaro,  
Appellant.

Order affirmed, in a memorandum.

Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Chief Judge Lippman dissents in an opinion.

2                    No. 160

Bentoria Holdings, Inc.,  
Respondent,

v.

Travelers Indemnity Company,  
Appellant,

et al.,  
Defendants.

Order reversed, with costs, the motion of Travelers Indemnity Company for summary judgment dismissing the complaint as against it granted, and certified question answered in the negative.

Opinion by Judge Smith.

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

1                    No. 173

Douglas Dean, et al.,  
Respondents,

v.

Tower Insurance Company of New York,  
Appellant.

Order affirmed, with costs, and certified question answered in the affirmative.

Opinion by Judge Ciparick.

Chief Judge Lippman and Judges Graffeo and Pigott concur.

Judge Jones dissents and votes to reverse in an opinion in which Judges Read and Smith concur.

4                    No. 178

In the Matter of County of Erie,  
Respondent,

v.

Civil Service Employees Association, Local 815,

Appellant.

Order affirmed, with costs, in a memorandum.

Judges Graffeo, Read, Smith, Pigott and Jones concur.

Judge Ciparick dissents and votes to reverse in an opinion in which Chief Judge Lippman concurs.

No. 179  
The People &c.,  
Respondent,  
v.  
Sandy Fernandez,  
Appellant.

Order affirmed.  
Opinion by Chief Judge Lippman.  
Judges Ciparick, Graffeo, Read and Jones concur.  
Judge Pigott dissents and votes to reverse in an  
opinion in which Judge Smith concurs.

3 No. 182  
The People &c.,  
Respondent,  
v.  
Lonnie R. Meckwood,  
Appellant.

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

2 No. 180  
In the Matter of Town of Wallkill,  
Respondent,  
v.  
Civil Service Employees Association, Inc.  
(Local 1000, AFSCME, AFL-CIO, Town of  
Wallkill Police Department Unit, Orange  
County Local 836), et al.,  
Respondents,  
Town of Wallkill Police Officers' Benevolent  
Association, Inc.,  
Appellant.

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

4                    No. 226 SSM 35  
Ricky D. West, Robert H. West, Roxy G.  
Bush, Pamela J. Judd, Jodi M. (White) Lynch,  
Charles K. West, Michael West and Jamie-  
Sue West,

Respondents,

v.

Mark Hogan and Elizabeth Hogan,  
Appellants,

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Mark Hogan and Elizabeth Hogan,  
Third-Party Plaintiffs-  
Appellants,

v.

David Vandewater,  
Third-Party Defendant-  
Respondent.

1                    No. 176  
Whitebox Concentrated Convertible Arbitrage  
Partners, L.P., et al.,  
Appellants,

v.

Superior Well Services, Inc.,  
Respondent.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs. The courts  
below did not err as a matter of law in awarding  
punitive damages (see Ross v Louise Wise Servs.,  
Inc., 8 NY3d 478, 489 [2007]).  
Chief Judge Lippman and Judges Ciparick, Graffeo,  
Read, Smith, Pigott and Jones concur.

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

## MOTIONS

4                    Mo. No. 2012-943  
In the Matter of Carlos Abreu,  
                    Appellant,  
                    v.  
Brian Fischer, &c.,  
                    Respondent.

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.

3                    Mo. No. 2012-661  
In the Matter of Carlos Abreu,  
                    Appellant,  
                    v.  
Michael F. Hogan, as Commissioner of  
Mental Health, et al.,  
                    Respondents.

On the Court's own motion, appeal taken from the January 2012 Appellate Division order dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Motion for leave to appeal from the January 2012 Appellate Division order denied.

3                    Mo. No. 2012-957  
In the Matter of Carlos Abreu,  
                    Appellant,  
                    v.  
Michael F. Hogan, as Commissioner of  
Mental Health, et al.,  
                    Respondents.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the July 2012 Appellate Division order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution. Motion for leave to appeal dismissed upon the ground that the July 2012 Appellate Division order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

2                    Mo. No. 2012-738  
Matter of Al Turi Landfill, Inc.,  
                    Appellant,  
                    v.  
Town of Goshen, et al.,  
                    Respondents.

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

4                    Mo. No. 2012-891  
In the Matter of Linda M. Allen,  
                    Appellant,  
                    v.  
Susan Fiedler,  
                    Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2012-823  
In the Matter of Association for Community  
Living, Inc., et al.,  
                    Appellants,  
                    v.  
New York State Office of Mental Health, et  
al.,  
                    Respondents.

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

2                    Mo. No. 2012-872  
In the Matter of Aameena B. (Anonymous).  
  
Administration for Children's Services, et al.,  
                    Respondents;  
Charria B. (Anonymous),  
                    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2012-888  
Jon R. Brown, Jr.,  
                    Appellant,  
                    v.  
BT-Newyo, LLC, &c.,  
                    Respondent.

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

1                    Mo. No. 2012-849  
Jennifer Cangro,  
                    Appellant,  
                    v.  
John Z. Marangos,  
                    Respondent.

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

2                    Mo. No. 2012-884  
The People &c.,  
                    Respondent,  
                    v.  
Collin Carter,  
                    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2012-847  
Benzion Deutsch,  
                    Appellant,  
                    v.  
Broche Twersky,  
                    Respondent.

Motion for leave to appeal denied.

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SSD 58 & 59  
Kevin Glassman, &c.,  
                    Respondent,  
                    v.  
ProHealth Ambulatory Surgery Center, Inc.,  
et al.,  
                    Appellants.

Appeals dismissed without costs, by the Court sua sponte, upon the ground that they do not lie. The terms of this Court's remittitur were not violated and an appeal therefore does not lie as of right.

3                    Mo. No. 2012-870  
In the Matter of Wilfredo Gonzalez,  
                    Appellant,  
                    v.  
Brian Fischer, &c., et al.,  
                    Respondents.

Motion for reargument of motion for leave to appeal  
denied.

1                    Mo. No. 2012-868  
In the Matter of Michael Owen He'ron,  
                    Appellant,  
                    v.  
Office of the District Attorney, Bronx  
County,  
                    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2012-890  
Highmount Olympic Fund, LLC,  
                    Plaintiff,  
                    v.  
PIPE Equity Partners, LLC,  
et al.,  
                    Defendants.

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

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PIPE Equity Partners, LLC,  
                    Appellant,  
                    v.  
Highmount Olympic Fund, LLC,  
                    Respondent.

4                    Mo. No. 2012-855  
In the Matter of Louis Jackson, II,  
                    Appellant,  
                    v.  
Debbra Beach,  
                    Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed so much of the Family Court order as denied appellant's petitions to enforce a prior Family Court order, dismissed upon the ground that such portion of the order does not finally determine the proceedings within the meaning of the Constitution; motion for leave to appeal otherwise denied.

3                    Mo. No. 2012-875  
Debra Ann Kalthoff et al.,  
                    Appellants,  
                    v.  
Arrowood Indemnity Company, &c.,  
                    Respondent,  
et al.,  
                    Defendants.

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

4                    Mo. No. 2012-835  
In the Matter of Thad L. Kempisty,  
                    Petitioner,  
Michael Kempisty,  
                    Appellant,  
                    v.  
Town of Geddes, et al.,  
                    Respondents.

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

1                    Mo. No. 2012-887  
Dr. Howard Kudler,  
                    Appellant,  
                    v.  
Dr. Barry Truffelman, et al.,  
                    Respondents.

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



2                    Mo. No. 2012-886  
In the Matter of Lisa Macari,  
                    Respondent,  
                    v.  
Hector Marichal,  
                    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2012-867  
In the Matter of John MacKenzie,  
                    Appellant,  
                    v.  
Andrea Evans, &c.,  
                    Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2012-865  
In the Matter of Barney M. Mathewson, Jr.,  
                    Respondent,  
                    v.  
Elizabeth Sessler,  
                    Respondent.  
Attorney for the Children,  
                    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2012-833  
In the Matter of Barbara Mueller,  
                    Appellant,  
                    v.  
Christoph Mueller,  
                    Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2012-889  
In the Matter of New York State Urban  
Development Corporation, &c.,  
                    Respondent.  
Fallsite, LLC et al.,  
                    Appellants.

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.

1                    Mo. No. 2012-809  
In the Matter of the State of New York,  
Respondent,  
v.  
Richard R. (Anonymous),  
Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2012-878  
Norwest Bank Minnesota, NA, &c.,  
Plaintiff,  
v.  
E.M.V. Realty Corp., &c., et al.,  
Respondents,  
RJR Mechanical, Inc.,  
Appellant,  
et al.,  
Defendants.

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.

4                    Mo. No. 2012-861  
Gail E. Patterson,  
Appellant,  
v.  
Central New York Regional Transportation  
Authority (CNYRTA),  
Respondent.

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

2                    Mo. No. 2012-874  
In the Matter of Incorporated Village of  
Rockville Centre,  
et al.,  
Respondents,  
v.  
Ernest Ziegler,  
Appellant.

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

2                    Mo. No. 2012-877  
Rocky Point Drive-In, L.P.,  
Appellant,  
v.  
Town of Brookhaven, et al.,  
Respondents.

Motion for leave to appeal granted.

2                    Mo. No. 2012-912  
Rocky Point Drive-In, L.P.,  
Appellant,  
v.  
Town of Brookhaven, et al.,  
Respondents.

Motion by Long Island Builders Institute, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted only to the extent that the proposed affirmation is accepted as filed, and for leave to appear amicus curiae on the appeal herein granted only to the extent that three copies of a brief may be served and 19 copies filed within 30 days.

3                    Mo. No. 2012-826  
In the Matter of Rashad Scott,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

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

3                    Mo. No. 2012-771  
In the Matter of Kai Stenson,  
Respondent,  
v.  
New York State Department of  
Transportation et al.,  
Appellants.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2012-845  
Rachel L. Stern,  
    Appellant,  
    v.  
Guy H. Easter, &c., et al.,  
    Respondents,  
et al.,  
    Defendant.

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

2                    Mo. No. 2012-885  
The People &c.,  
    Respondent,  
    v.  
Paul Thompson,  
    Appellant.

Motion to waive strict compliance with certain requirements concerning appellant's appendix herein granted to the extent that the appeal may be perfected upon ten copies of the appendix.

3                    Mo. No. 2012-837  
In the Matter of Brian Woods,  
    Appellant,  
    v.  
New York State Thruway Authority, et al.,  
    Respondents.  
Workers' Compensation Board,  
    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.