

June 26, 2013

CASES

No. 122  
Jeana Barenboim et al., &c.,  
Appellants,  
v.  
Starbucks Corporation,  
Respondent.

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Eugene Winans, et al., &c.,  
Appellants,  
Kennisha Lawrence,  
Plaintiff,  
v.  
Starbucks Corporation,  
Respondent.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of the Rules of Practice of the New York State Court of Appeals, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified questions answered in accordance with the opinion herein.

Opinion by Judge Graffeo.

Chief Judge Lippman and Judges Read, Pigott and Abdus-Salaam concur.

Judge Smith dissents in part in an opinion.

Judge Rivera dissents in part in a separate opinion.

2 No. 136  
The People &c.,  
Respondent,  
v.  
Lawrence Blankymsee,  
Appellant.

Order affirmed.

Opinion by Judge Rivera.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Abdus-Salaam concur.

2 No. 135  
The People &c.,  
Respondent,  
v.  
Christopher Brinson,  
Appellant.

Order affirmed.

Opinion by Judge Rivera.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Abdus-Salaam concur.

3                    No. 132  
Island Park, LLC,  
    Appellant,  
    v.  
State of New York,  
    Respondent.

Order affirmed, with costs, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur.

2                    No. 128  
Kevin Kowalski,  
    Appellant,  
    v.  
St. Francis Hospital and Health Centers, et al.,  
    Respondents,  
et al.,  
    Defendants.

Order affirmed, with costs.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Graffeo, Read and  
Rivera concur.  
Judge Pigott dissents and votes to reverse in an  
opinion in which Judge Abdus-Salaam concurs.

4                    No. 124  
The People &c.,  
    Respondent,  
    v.  
Isidoro Marra,  
    Appellant.

Order affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur.

1                    No. 207 SSM 14  
Mia Plaza, an Infant by Her Mother and  
Natural Guardian, Claribel Rodriguez,  
    Appellant,  
    v.  
New York Health and Hospitals Corporation  
(Jacobi Medical Center),  
    Respondent.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs, and certified  
question not answered on the ground that it is  
unnecessary, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur.

**MOTIONS**

Mo. No. 2013-483  
4815 Development Corp., et al.,  
Plaintiffs,  
v.  
Harleysville Insurance Company of New  
York,  
Respondent,  
United National Specialty Insurance  
Company,  
Appellant.

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

2 Mo. No. 2013-527  
In the Matter of Rason S.B. (Anonymous),  
Petitioner,  
v.  
Alexis H. (Anonymous),  
Respondent.

Motion for leave to appeal denied.

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In the Matter of John M. Zenir, &c.,  
Respondent,  
v.  
Rason S.B. (Anonymous), et al.,  
Respondents,  
Marquis B. (Anonymous), &c.,  
Appellant.  
(And Another Proceeding.)

1 Mo. No. 2013-520  
Liam Blainey,  
Appellant,  
v.  
Metro North Commuter Railroad, et al.,  
Defendants,  
The City of New York,  
Respondent.

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

2 Mo. No. 2013-513  
Joan Coccia,  
Respondent,  
v.  
Thomas F. Liotti,  
Appellant.

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

1 Mo. No. 2013-525  
Andrew Corrigan,  
Appellant,  
v.  
Stellar Management, LLC, et al.,  
Respondents.

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 action within the meaning of the Constitution. Motion for poor person relief dismissed as academic.

4 Mo. No. 2013-497  
Winifred K. Day,  
Appellant,  
v.  
One Beacon Insurance,  
Respondent.

Motion for reargument of motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements. Judge Abdus-Salaam took no part.

4 Mo. No. 2013-535  
Winifred K. Day,  
Appellant,  
v.  
One Beacon Insurance,  
Respondent.

Motion by the New York State Academy of Trial Lawyers for leave to file a brief amicus curiae on the motion for reargument herein granted and the brief is accepted as filed. Judge Abdus-Salaam took no part.

2 Mo. No. 2013-517

Tatiana Degtiarev,  
Respondent,

v.

Linda Delecia-Kenny,  
Defendant.

Robert P. Tusa,  
Nonparty-Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-294

In the Matter of Empire Center for New York  
State Policy,  
Appellant,

v.

New York State Teachers' Retirement  
System,  
Respondent.

Motion for leave to appeal granted.  
Judge Abdus-Salaam took no part.

3 Mo. No. 2013-382

In the Matter of Empire Center for New York  
State Policy,  
Appellant,

v.

New York State Teachers' Retirement  
System,  
Respondent.

Motion by the Albany Times Union, et al. for leave  
to file a brief amici curiae on the motion for leave to  
appeal herein granted and the brief is accepted as  
filed.  
Judge Abdus-Salaam took no part.

1 Mo. No. 2013-295

In the Matter of Empire Center for New York  
State Public Policy,  
Appellant,

v.

Teachers' Retirement System of the City of  
New York,  
Respondent.

Motion for leave to appeal granted.  
Judge Abdus-Salaam took no part.

1 Mo. No. 2013-383  
In the Matter of Empire Center for New York  
State Public Policy,  
Appellant,  
v.  
Teachers' Retirement System of the City of  
New York,  
Respondent.

Motion by the Albany Times Union, et al. for leave  
to file a brief amici curiae on the motion for leave to  
appeal herein granted and the brief is accepted as  
filed.  
Judge Abdus-Salaam took no part.

4 Mo. No. 2013-502  
Erie Insurance Company of New York, &c.,  
Appellant,  
v.  
AE Design, Inc.,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-507  
Seth Fielding,  
Appellant,  
v.  
Stephanie Kupferman et al.,  
Respondents.

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

3 Mo. No. 2013-516  
In the Matter of A. Dennis Gardner,  
Respondent,  
v.  
Coxsackie-Athens Central School District  
Board of Education,  
Appellant.

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.

1 Mo. No. 2013-486  
The People &c.,  
Respondent.  
v.  
Kevin Goldbeck,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2013-504  
Richard N. Golden,  
Respondent,  
v.  
Citibank, N.A.,  
Appellant.

Motion for leave to appeal granted.

4 Mo. No. 2013-526  
The People &c.,  
Respondent,  
v.  
Joe W. Green,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2013-496  
Hartford Insurance Company of Midwest,  
&c.,  
Appellant,  
v.  
Orange and Rockland Utilities, Inc.,  
Respondent.

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

4 Mo. No. 2013-498  
Kenneth J. Hecker,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion for reargument denied.  
Judges Rivera and Abdus-Salaam took no part.

3 Mo. No. 2013-522  
In the Matter of Hazel Hope,  
Respondent,  
v.  
Warren County Board of Elections, &c.,  
Appellant.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2013-523  
In the Matter of Marquise JJ., &c.

Cortland County Department of Social  
Services,  
Respondent;  
Brithany JJ.,  
Appellant.  
(And Another Related Proceeding.)

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

1 Mo. No. 2013-505  
In the Matter of Ruth L.,  
Respondent,  
v.  
Clemese Theresa J.,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-510  
In the Matter of Melody M.,  
Appellant,  
v.  
Robert M.,  
Respondent.  
(And Three Other Related Proceedings).

Motion for leave to appeal denied.

3 Mo. No. 2013-488  
In the Matter of Deana R. Mensche,  
Appellant,  
v.  
Debra I. Mensche,  
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.

4 Mo. No. 2013-491  
In the Matter of Rafael A. Mercado,  
Respondent,  
v.  
Kathy R. Frye,  
Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2013-489  
In the Matter of Michael A. Goldstein No. 1  
Trust, et al.,  
                  Appellants,  
                  v.  
Tax Appeals Tribunal of the State of New  
York et al.,  
                  Respondents.

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

2                    Mo. No. 2013-487  
In the Matter of Debra A. Ramallo,  
                  Appellant,  
                  v.  
New York State Division of Human Rights, et  
al.,  
                  Respondents.

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

1                    Mo. No. 2013-501  
John Rodriguez,  
                  Appellant,  
                  v.  
Gilbane/TDX Joint Venture,  
et al.,  
                  Respondents,  
et al.,  
                  Defendant.  
(And Third-Party Actions.)

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

3                    Mo. No. 2013-485  
Rashad Scott,  
                  Appellant,  
                  v.  
Joseph T. Smith, &c., et al.,  
                  Respondents.

Motion for leave to appeal denied.

3                    Mo. No. 2013-493  
In the Matter of Donna Silverman,  
                  Appellant,  
et al.,  
                  Petitioner,  
                  v.  
New York State Workers' Compensation  
Board et al.,  
                  Respondents.

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

2                    Mo. No. 2013-511  
In the Matter of Edward Michael Thomas,  
&c., deceased.

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

Maureen Page,  
                  Appellant;  
Eileen Thomas,  
                  Respondent.

4                    Mo. No. 2013-515  
In the Matter of Tom Thomas  
et al.,  
                  Appellants,  
                  v.  
Cynthia L. Boheen Davis, &c.,  
et al.,  
                  Respondents.

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

1                    Mo. No. 2013-519  
Oscar Torres, &c.,  
                  Appellant,  
                  v.  
New York City Health and Hospitals  
Corporation (Lincoln Hospital),  
                  Respondent.

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

1                    Mo. No. 2013-490  
Trump Securities, LLC, et al.,  
    Respondents,  
    v.  
The Purolite Company, et al.,  
    Appellants,  
Watch Hill Partners LLC,  
    Defendant.

Motion for leave to appeal dismissed as untimely.  
The prior motion for leave to appeal made to the  
Appellate Division was untimely (see Karger,  
Powers of the New York Court of Appeals § 12:3 at  
436-437 [3d ed rev]).  
Judge Abdus-Salaam took no part.

                          Mo. No. 2013-509  
The People &c.,  
    Respondent,  
    v.  
Gary White,  
    Appellant.

Motion for reargument denied.  
Judges Rivera and Abdus-Salaam took no part.

3                    Mo. No. 2013-500  
In the Matter of Earl White,  
    Respondent,  
    v.  
County of Sullivan,  
    Appellant.

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.