

June 27, 2013

CASES

4 No. 209 SSM 17

Christopher J. Alf,  
Appellant,

v.

The Buffalo News, Inc.,  
Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Rivera and Abdus-Salaam concur.  
Judge Pigott took no part.

2 No. 133

The People &c.,  
Respondent,

v.

Derek Chisholm,  
Appellant.

Order modified by remitting to Supreme Court, Queens County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed.

Chief Judge Lippman and Judges Graffeo, Read, Pigott, Rivera and Abdus-Salaam concur.  
Judge Smith dissents and votes to affirm in an opinion.

3 No. 123

In the Matter of Michael A. Cunningham,  
Appellant,

v.

New York State Department of Labor,  
Respondent.

Judgment reversed, with costs, and matter remitted to the Appellate Division, Third Department, with directions to remand to the Commissioner of Labor for further proceedings in accordance with the opinion herein.

Opinion by Judge Smith.

Judges Graffeo, Read and Pigott concur.

Judge Abdus-Salaam concurs in result in an opinion in which Chief Judge Lippman and Judge Rivera concur.

1                    No. 134  
Manuel De La Cruz, et al.,  
    Appellants,  
    v.  
Caddell Dry Dock & Repair Co., Inc., et al.,  
    Respondents.

4                    No. 126  
Marguerite James,  
    Appellant,  
    v.  
David Wormuth, M.D., and CNY Thoracic  
Surgery, P.C.,  
    Respondents.

3                    No. 131  
The People &c.,  
    Respondent,  
    v.  
Reece Rudolph,  
    Appellant.

Order reversed, with costs, and plaintiffs' motion for partial summary judgment on the issue of liability granted.  
Opinion by Judge Pigott.  
Chief Judge Lippman and Judges Graffeo, Read, Smith and Rivera concur.  
Judge Abdus-Salaam took no part.

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

Order reversed and case remitted to County Court, Warren County, for further proceedings in accordance with the opinion herein.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Rivera and Abdus-Salaam concur.  
Judge Graffeo concurs in result in an opinion.  
Judge Read dissents in an opinion in which Judge Pigott concurs.

## MOTIONS

1                    Mo. No. 2013-308  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by plaintiffs for reargument granted and case set down for a future session of this Court. Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-309  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York Committee for Occupational Safety and Health for leave to appear amicus curiae on the motions for reargument herein granted and the affirmation is accepted as filed. Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-310  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by Injured Workers Bar Association for leave to file a brief amicus curiae on the motions for reargument herein granted and the brief is accepted as filed. Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-315  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York State AFL-CIO, et al. for leave to file a brief amici curiae on the motions for reargument herein granted and the brief is accepted as filed. Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-319  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York State Bar Association for leave to file a brief amicus curiae on the motions for reargument herein granted and the brief is accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-324  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by Workers Injury Law & Advocacy Group for leave to file a brief amicus curiae on the motions for reargument herein granted and the brief is accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-330  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by The Center for Popular Democracy for leave to appear amicus curiae on the motions for reargument herein granted and the affirmation and brief are accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-331  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York State Trial Lawyers Association for leave to appear amicus curiae on the motions for reargument herein granted and the affirmation is accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-332  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by Make the Road New York et al. for leave to appear amici curiae on the motions for reargument herein granted and the affirmation and brief are accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-333  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by The Black Institute for leave to appear amicus curiae on the motions for reargument herein granted and the affirmation and brief are accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-334  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by defendants for reargument granted and case set down for a future session of this Court.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2013-341  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York Communities for Change for leave to appear amicus curiae on the motions for reargument herein granted and the affirmation and brief are accepted as filed.  
Judges Rivera and Abdus-Salaam took no part.

2                    Mo. No. 2013-542  
In the Matter of Ceanna B.

Motion for leave to appeal denied.

Orange County Department of Social  
Services,  
    Respondent;  
Thawanda C.,  
    Appellant,  
et al.,  
    Respondent.  
(And Another Proceeding.)

3                    Mo. No. 2013-538  
The People &c.,  
    Respondent,  
v.  
William J. Bush,  
    Appellant.

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

1                    Mo. No. 2013-543  
In the Matter of Bryant C., Jr., &c.,  
    Appellant.

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

4                    Mo. No. 2013-561  
In the Matter of Anastasia C.

Motion for leave to appeal denied.

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Cattaraugus County Department of Social  
Services,  
    Respondent;  
Carol C.,  
    Appellant.  
(And Other Proceedings.)

1                    Mo. No. 2013-484  
Luis Casas, &c.,  
                  Appellant,  
          v.  
Consolidated Edison Company of New York,  
Inc.,  
                  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.  
Chief Judge Lippman took no part.

2                    Mo. No. 2013-530  
Elizabeth Cioffi-Petrakis,  
                  Respondent,  
          v.  
Panagiotis Petrakis,  
                  Appellant.

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

2                    Mo. No. 2013-566  
Elizabeth Cioffi-Petrakis,  
                  Respondent,  
          v.  
Panagiotis Petrakis,  
                  Appellant.

Motion by the American Academy of Matrimonial Lawyers for leave to appear amicus curiae on the motion for leave to appeal herein granted and the affirmation is accepted as filed.

3                    Mo. No. 2013-546  
Charles E. Collins III,  
                  Appellant,  
          v.  
Yodle, Inc., et al.,  
                  Respondents.

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

                  SSD 35  
In the Matter of Ronnie Covington,  
                  Appellant,  
          v.  
Brian Fischer, &c.,  
                  Respondent.

Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Fourth Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

2 Mo. No. 2013-550  
In the Matter of Max Crane, &c.

Alan M. Crane,  
Respondent;  
Judith Hollander,  
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.

2 Mo. No. 2013-552  
Deutsche Bank Nation Trust Company, &c.,  
Respondent,  
v.  
Francisco Feliciano, et al.,  
Defendants,  
Sheila Ellerbe,  
Appellant.

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. 2013-593  
In the Matter of Anthony C. Donofrio, an  
attorney and counselor-at-law.

Grievance Committee for the Tenth Judicial  
District,  
Respondent.  
Anthony C. Donofrio, Esq.,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2013-553  
The People &c. ex rel. Mitchel D. G.  
(Anonymous),  
Appellant,  
v.  
Interfaith Medical Center, &c., et al.,  
Respondents.

Motion to dismiss appeal granted and appeal dismissed, without costs, on the ground that relator has been released and, therefore, his liberty is no longer restrained to such a degree as to entitle him to the extraordinary writ of habeas corpus (see CPLR 7002[a]; see also People ex rel. Wilder v Markley, 26 NY2d 648 [1970]).

1                    Mo. No. 2013-559  
The People &c.,  
    Respondent,  
    v.  
Tyrone Hunter,  
    Appellant.

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

2                    Mo. No. 2013-531  
In the Matter of Town of Islip,  
    Appellant,  
    v.  
New York State Public Employment  
Relations Board, et al.,  
    Respondents.

Motion for leave to appeal granted.

                    Mo. No. 2013-557  
The People &c. ex rel. Stanley Jackson,  
    Appellant,  
    v.  
New York State Department of Correctional  
Services,  
    Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2013-560  
In the Matter of Angelina K.  
et al.

Motion for leave to appeal denied.

Eliza W. et al.,  
    Respondents,  
Michael K.,  
    Appellant.

4                    Mo. No. 2013-534  
Charles R. Livecchi,  
    Appellant,  
    v.  
John Nacca,  
    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. 2013-556  
The People &c. ex rel. Gary H. Moore,  
Appellant,  
v.  
Superintendent of Southport Correctional  
Facility,  
Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-528  
Thomas E. O'Brien, et al.,  
Appellants,  
v.  
Town of Huntington et al.,  
Respondents.

Motions for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.  
Judge Smith took no part.

1                    Mo. No. 2013-554  
In the Matter of Anthony R., &c.,  
Appellant.

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

1                    Mo. No. 2013-532  
Yanina Rivera, &c.,  
Appellant,  
v.  
K. Jothianandan, M.D.,  
Respondent.

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

2                    Mo. No. 2013-537  
In the Matter of Alexandria S.  
  
Orange County Department of Social  
Services,  
Respondent,  
v.  
Alexander S.,  
Appellant,  
et al.,  
Respondent.  
(And Another Proceeding.)

Motion for leave to appeal denied.

Mo. No. 2013-565

Judith Lynn Stenroos,  
Respondent,

v.

William A. Maecker,  
Appellant.

Motion for a stay dismissed as academic.

1 Mo. No. 2013-544

Addison Thompson,  
Appellant,

v.

The Andy Warhol Foundation for the Visual  
Arts, Inc., et al.,  
Respondents,  
et al.,  
Defendants.

Motion for leave to appeal denied.