

October 10, 2013

CASES

1 No. 250 SSM 23
409-411 Sixth Street, LLC,
 Appellant,
 v.
Masako Mogi,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein, and certified question not answered upon the ground that it is unnecessary. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

2 No. 143
The People &c.,
 Respondent,
 v.
James Alcide,
 Appellant.

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

4 No. 154
The People &c.,
 Respondent,
 v.
Daryl H.,
 Appellant.

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

2 No. 142
Eric Landon, &c.,
 Respondent,
 v.
Kroll Laboratory Specialists, Inc.,
 Appellant.

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

1 No. 160
Merrill Lynch, Pierce, Fenner & Smith,
Incorporated, et al.,
 Respondents,
 v.
Global Strat Inc., &c., et al.,
 Defendants,
Ezequiel Nasser, et al.,
 Appellants.

Order modified, without costs, by vacating the judgment of Supreme Court, New York County, and remitting to that court for further proceedings in accordance with the memorandum herein and, as so modified, affirmed.
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.
Judge Abdus-Salaam took no part.

1 No. 152
Giuseppe Romanello,
 Appellant,
 v.
Intesa Sanpaolo, S.p.A., et al.,
 Respondents.

Order, insofar as appealed from, modified, without costs, by reinstating the second cause of action of the complaint and, as so modified, affirmed, in a memorandum.
Judges Graffeo, Read, Smith and Pigott concur.
Judge Abdus-Salaam dissents in part in an opinion in which Chief Judge Lippman and Judge Rivera concur.

1 No. 162
Jose A. Soto,
 Appellant,
 v.
J. Crew Inc., et al.,
 Respondents.

Order affirmed, with costs, and certified question not answered upon the ground that it is unnecessary.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

3 No. 144
The People &c.,
 Respondent,
 v.
Eddie Thompson, Jr.,
 Appellant.

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

MOTIONS

1 Mo. No. 2013-620
172 Van Duzer Realty Corp.,
Respondent,
v.
Globe Alumni Student Assistance
Association, Inc., et al.,
Appellants.

Motion for leave to appeal granted.

3 Mo. No. 2013-630
In the Matter of Sophie Ackermann,
Appellant,
New York City Department of Citywide
Administrative Services,
Respondent.
Commissioner of Labor,
Respondent.

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

2 Mo. No. 2013-726
In the Matter of Rosemarie Baird,
Appellant,
v.
New York State Division of Human Rights, et
al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2013-733
In the Matter of Birch Tree Partners, LLC,
Appellant,
v.
Zoning Board of Appeals of Town of East
Hampton et al.,
Respondents.

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

1 Mo. No. 2013-735
In the Matter of Fritz S. Bonaventure,
 Appellant,
 v.
Cesare A. Perales, &c.,
 Respondent.

Motion for leave to appeal denied.
Judge Smith took no part.

2 Mo. No. 2013-413
Alexander Breytman,
 Appellant,
 v.
Olinville Realty, LLC,
 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.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2013-746
Alexander Breytman,
 Appellant,
 v.
Olinville Realty, LLC,
 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.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2013-978
The People &c.,
 Respondent,
 v.
Ivan Calaff,
 Appellant.

Motion for assignment of counsel granted and Robert
S. Dean, Esq., Center for Appellate Litigation, 74
Trinity Place, 11th Floor, New York, NY 10006
assigned as counsel to the appellant on the appeal
herein.
Judge Abdus-Salaam took no part.

3 Mo. No. 2013-728
In the Matter of Thomas Cardno,
 Appellant,
 v.
The New York State and Local Retirement
System,
 Respondent.

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

3 Mo. No. 2013-739
In the Matter of Carolyn Anne Coleman,
 Respondent,
 v.
Compass Group USA, Inc./Chartwells,
 Appellant.
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.

1 Mo. No. 2013-797
Andrew Corrigan,
 Appellant,
 v.
Stellar Management, LLC, et al.,
 Respondents.

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

1 Mo. No. 2013-990
The People &c.,
 Respondent,
 v.
Paul Cortez,
 Appellant.

Motion by National Association of Criminal Defense Lawyers et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

Mo. No. 2013-953

Gary Cruz, et al.,
Appellants,
v.
TD Bank, N.A.,
Respondent.

Geraldo F. Martinez, et al.,
Appellants,
v.
Capital One Bank, N.A.,
Respondent.

Motion by AARP et al. for leave to file a brief amici curiae on consideration of the certified questions herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

Mo. No. 2013-977

Gary Cruz, et al.,
Appellants,
v.
TD Bank, N.A.,
Respondent.

Geraldo F. Martinez, et al.,
Appellants,
v.
Capital One Bank, N.A.,
Respondent.

Motion by New York Bankers Association for leave to file a brief amicus curiae on consideration of the certified questions herein granted and the proposed brief is accepted as filed.

4 Mo. No. 2013-685
In the Matter of Tyrone Davis,
Appellant,
v.
State of New York, et al.,
Respondents.

Motion for leave to appeal granted.

3 Mo. No. 2013-994
In the Matter of State of New York,
Respondent,
v.
Donald DD.,
Appellant.

Motion for poor person relief granted.

3 Mo. No. 2013-781
In the Matter of Lydia C. Deyo,
Appellant,
v.
Richard P. Bagnato,
Respondent.
(And Four Other Related Proceedings.)

Motion for leave to appeal denied.

1 Mo. No. 2013-729
Epic Security Corp.,
Appellant,
v.
AMCC Corp.,
Respondent.

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

4 Mo. No. 2013-784
County of Erie,
Respondent,
v.
M/A-Com, Inc., et al.,
Defendants,
Kevin J. Comerford,
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.

3 SSD 53
In the Matter of Harold Hahn,
Appellant,
v.
Donald A. Williams, as County Judge of
Ulster County,
Respondent.

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

4 Mo. No. 2013-798
Niesha Haynes,
 Appellant,
 v.
Kaleida Health, et al.,
 Respondents.

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.

1 Mo. No. 2013-795
The People &c.,
 Respondent,
 v.
Jerome Jamison,
 Appellant.

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

2 Mo. No. 2013-671
In the Matter of Daniel Kasckarow,
 Appellant,
 v.
Board of Examiners of Sex Offenders of State
of New York,
 Respondent.

Motion for leave to appeal granted.

3 Mo. No. 2013-764
In the Matter of Brian M. Kennedy,
 Appellant,
 v.
Thomas DiNapoli, &c.,
 Respondent.

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

4 Mo. No. 2013-771
S. Shane Khanjani,
 Appellant,
 v.
Norman Schreiber,
 Respondent.

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

3 Mo. No. 2013-752
Marc E. Kingsley, et al.,
 Appellants,
 v.
Village of Cooperstown, et al.,
 Defendants,
First Street Properties LCC,
 Respondent.

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

4 Mo. No. 2013-1009
Herbert Kolbe, Lynne Nichols, Joann Seefeldt
and Phyllis Harris,
 Appellants,
 v.
Christine J. Tibbetts, &c.,
et al.,
 Respondents.

Motion by New York State Public Employees Federation, AFL-CIO for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

2 SSD 54
Edward P. Mangano, et al.,
 Appellants,
 v.
Sheldon Silver, et al.,
 Defendants,
State of New York, 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. 2013-738
In the Matter of Antoinette McK.,
 Appellant,
 v.
Administration for Children's Services-NYY,
 Respondent,
Makena Asante Malika McK.,
et al.,
 Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2013-792
Dale E. McKay,
Respondent,
v.
Cherri McKay,
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.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2013-995
Town of Oyster Bay,
Appellant,
v.
Lizza Industries, Inc.,
Respondent.
(And Other Actions.)

Motion by Eastern Contractors Association, Inc. for leave to file a brief amicus curiae on the appeals herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

4 Mo. No. 2013-778
In the Matter of Timothy Radley,
Respondent,
v.
Kathy Radley,
Appellant.

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

1 Mo. No. 2013-748
The People &c.,
Respondent,
v.
Ronald Ratcliff,
Appellant.

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

1 Mo. No. 2013-986
The People &c.,
Respondent,
v.
Rodhames-Antonio Rodriguez,
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.

2 Mo. No. 2013-943
The People &c. ex rel. John F. Ryan, on
behalf of Richard Shaver,
 Respondent,
 v.
Kevin Cheverko, &c., et al.,
 Appellants.

 Mo. No. 2013-740
The People &c.,
 Respondent,
 v.
Tirso Salcedo,
 Appellant.

1 Mo. No. 2013-969
The People &c.,
 Respondent,
 v.
Julian Silva,
 Appellant.

4 Mo. No. 2013-744
The People &c. ex rel. Anselmo Soto, Jr.,
 Appellant,
 v.
Paul M. Gonyea, &c.,
 Respondent.

Motion by New York State Sheriffs' Association, Inc. 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 nine copies filed within seven days.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no civil appeal lies from the order of Supreme Court entered in this criminal proceeding (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).
Motion for poor person relief dismissed as academic.

Motion for assignment of counsel granted and John R. Lewis, Esq., 36 Hemlock Drive, Sleepy Hollow, NY 10591 assigned as counsel to the appellant on the appeal herein.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies from the order of an individual Justice of the Appellate Division (see NY Const, art VI, § 3[b]; CPLR 5601).
Motion for poor person relief dismissed as academic.

4 Mo. No. 2013-914
The People &c. ex rel. Anselmo Soto, Jr.,
Appellant,
v.
Paul M. Gonyea, &c.,
Respondent.

Motion for leave to appeal dismissed upon the ground that it does not lie from the order of an individual Justice of the Appellate Division (see NY Const, art VI, § 3[b]; CPLR 5602).

2 Mo. No. 2013-768
Antonina Squitieri,
Appellant,
v.
Michael Trapani et al.,
Respondents.

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

4 Mo. No. 2013-718
In the Matter of Steuben County Department
of Social Services, &c.,
Respondent,
v.
Morris J. Sarfaty,
Appellant.

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

2 SSD 52
Luisa V. Torres,
Appellant,
v.
Louzoun Enterprises, Inc.
Doing Business as Queensboro Toyota,
Respondent.

Appeal, insofar as taken from that part of the Appellate Division order that affirmed Supreme Court's order dismissing the complaint, dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved; appeal, insofar as taken from that part of the Appellate Division order that affirmed Supreme Court's order denying appellant's motion to amend the complaint, dismissed without costs, by the Court sua sponte, upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution.

3 Mo. No. 2013-972
The People &c.,
 Respondent,
 v.
Clide Wilson,
 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.

1 SSD 55
The People &c.,
 Respondent,
 v.
Diane Word,
 Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no civil appeal lies from the order entered in this criminal action (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).