

April 02, 2009

**CASES**

No. 45  
Miliha Ferluckaj,  
Respondent,  
v.  
Goldman Sachs & Co.,  
Appellant,  
Henegan Construction Co., Inc.  
Defendant.

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Goldman Sachs & Co.,  
Third-Party Plaintiff,  
v.  
American Building Maintenance  
Co.,  
Third-Party Defendant.

Order reversed, with costs, that part of defendant Goldman Sachs & Co.'s motion seeking summary judgment dismissing plaintiff's Labor Law § 240(1) claim granted, complaint against Goldman Sachs & Co. dismissed in the entirety, and certified question answered in the negative. Opinion by Judge Smith. Judges Graffeo, Read and Jones concur. Judge Pigott dissents and votes to affirm in an opinion in which Chief Judge Lippman and Judge Ciparick concur.

No. 106 SSM 6  
The People &c.,  
Respondent,  
v.  
Donald France,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

No. 25  
Golden Gate Yacht Club,  
Appellant,  
v.  
Societe Nautique De Geneve,  
Respondent,  
Club Nautico Espanol De Vela,  
Intervenor-Respondent.

Order reversed, with costs, and orders of Supreme Court, New York County, reinstated. Opinion by Judge Ciparick. Judges Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

No. 36  
Kerusa Co. LLC,  
Respondent,  
v.  
W10Z/515 Real Estate Limited  
Partnership, et al.,  
Appellants.

Order, insofar as appealed from,  
reversed, with costs, that branch of  
plaintiff's motion that sought to amend  
the complaint to add a common law fraud  
cause of action denied, and certified  
question answered in the negative.  
Opinion by Judge Read.  
Judges Ciparick, Graffeo, Smith, Pigott  
and Jones concur.  
Chief Judge Lippman took no part.

No. 31  
LMK Psychological Services, P.C.  
et al.,  
Respondents,  
v.  
State Farm Mutual Automobile  
Insurance Company,  
Appellant.

Order, insofar as appealed from,  
reversed, with costs, and case remitted  
to Supreme Court, Greene County, for  
further proceedings in accordance with  
the opinion herein.  
Opinion by Judge Pigott.  
Judges Ciparick, Graffeo, Read, Smith  
and Jones concur.  
Chief Judge Lippman took no part.

**MOTIONS**

Mo. No. 2009-114  
In the Matter of Warren Abele,  
et al.,  
                    Appellants,  
                    v.  
Tina Dimitriadis, &c., et al.,  
                    Respondents.

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

Mo. No. 2009-265  
In the Matter of Allstate  
Insurance Company,  
                    Respondent,  
                    v.  
Nydia Rivera, et al.,  
                    Appellants.

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

Mo. No. 2009-206  
Eugenia Anderson, et al.,  
                    Appellants,  
                    v.  
Town of Kirkland, et al.,  
                    Respondents.

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

Mo. No. 2009-381  
Jiovon Anonymous, a Minor by and  
Through his Father and Legal  
Guardian, Thomas Anonymous, &  
Thomas Anonymous, Individually,  
                    Respondents,  
                    v.  
City of Rochester, Robert Duffy,  
in his official capacity as Mayor  
of City of Rochester, and David  
Moore, in his official capacity  
as Chief of Police of City of  
Rochester,  
                    Appellants.

Motion by New York Civil Liberties Union 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 24 copies filed within seven days.

Mo. No. 2009-385

Jiovon Anonymous, a Minor by and  
Through his Father and Legal  
Guardian, Thomas Anonymous, &  
Thomas Anonymous, Individually,  
Respondents,

v.

City of Rochester, Robert Duffy,  
in his official capacity as Mayor  
of City of Rochester, and David  
Moore, in his official capacity  
as Chief of Police of City of  
Rochester,

Appellants.

Motion by New York State Conference of  
Mayors and Municipal Officials for  
leave to file a brief amicus curiae on  
the appeal herein granted and the  
proposed brief is accepted as filed.

Mo. No. 2009-179

The People &c.,  
Respondent,

v.

Shawn J. Baker,  
Appellant.

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

Mo. No. 2009-214

In the Matter of George N.B.,  
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-181

The People &c.,  
Respondent,

v.

Darrell Byrd,  
Appellant.

Motion, insofar as it seeks leave to  
appeal from that part of the Appellate  
Division order that affirmed Supreme  
Court's order denying appellant's  
motion to vacate, dismissed upon the  
ground that such portion of the order  
does not finally determine the  
proceeding within the meaning of the  
Constitution; motion for leave to  
appeal otherwise denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-146  
Samantha Carroll et al.,  
Appellants,  
v.  
Nostra Realty Corporation,  
Respondent.  
(And a Third-Party Action.)

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.

Mo. No. 2009-187  
Hani Chen,  
Appellant,  
v.  
City of New York,  
Respondent,  
et al.,  
Defendants.

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

Mo. No. 2009-155  
In the Matter of Village of  
Chestnut Ridge, et al.,  
Respondents,  
et al.,  
Petitioners,  
v.  
Town of Ramapo, et al.,  
Respondents,  
Scenic Development, LLC,  
Appellant.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine an action or proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602(a)(2).

Mo. No. 2009-225  
In the Matter of Village of  
Chestnut Ridge, et al.,  
Respondents,  
et al.,  
Petitioners,  
v.  
Town of Ramapo, et al.,  
Appellants,  
Scenic Development, LLC,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine an action or proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602(a)(2).

Mo. No. 2009-266  
In the Matter of Clarendon  
National Insurance Company,  
Respondent,  
v.  
Francisco Nunez, Sr., et al.,  
Appellants.

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

Mo. No. 2009-170  
In the Matter of Tina Cobane,  
Appellant,  
v.  
Brian Cobane,  
Respondent.  
(And Four Other Related  
Proceedings.)

Motion for leave to appeal denied.

Mo. No. 2009-100  
Mustafa Donuk,  
Appellant,  
v.  
Sears, Roebuck & Co.,  
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-182  
Fada International Corp.,  
Appellant,  
v.  
Rowena Cheung, et al.,  
Respondents.

Motion for leave to appeal denied.  
Chief Judge Lippman took no part.

Mo. No. 2009-125  
William C. Gennaro,  
Appellant,  
v.  
Cord Meyer Development Company &  
LLC,  
Respondent.

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

Mo. No. 2009-236  
Henderson Greaves,  
Respondent,  
v.  
Obayashi Corporation, et al.,  
Appellants,  
EIC Associates, Inc.,  
Defendant.  
(And a Third-Party Action.)

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.

SSD 10  
In the Matter of Devon Griffin,  
Appellant,  
v.  
The Honorable William D. Walsh,  
Onondaga County Court Judge,  
Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that it does not lie (see CPLR 5601).  
Judge Pigott took no part.

Mo. No. 2009-272  
Humphreys & Harding, Inc.,  
Respondent,  
v.  
Universal Bonding Insurance  
Company,  
Third-Party Respondent,  
Welch Construction Corp., et al.,  
Third-Party Appellants.

Motion for reargument of motion for leave to appeal denied.  
Chief Judge Lippman took no part.

Mo. No. 2009-154  
Mehrdad Kahen et al.,  
Respondents,  
v.  
Tyrone Woutersz, et al.,  
Respondents,  
Rosemary Toriola,  
Appellant.

Motion for reconsideration of this Court's December 2, 2008 dismissal order denied.  
Motion for leave to appeal dismissed upon the ground that it does not lie (see CPLR 5602).  
Chief Judge Lippman took no part.

Mo. No. 2009-302  
The People &c.,  
Respondent,  
v.  
Rebecca Kaszubinski,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 denied as unnecessary and motion papers treated as a timely CPL 460.20 application.

Mo. No. 2009-366  
Lee N. Koehler,  
Appellant,  
v.  
The Bank of Bermuda Limited,  
Respondent.

Motion by The Clearing House Association L.L.C. for leave to appear amicus curiae on consideration of the certified question herein granted only to the extent that the proposed brief is accepted as filed.

Mo. No. 2009-159  
In the Matter of Long Island Affordable Homes, Inc.,  
Respondent,  
v.  
Board of Appeals of Town of Hempstead,  
Appellant.

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

Mo. No. 2009-137  
Main Evaluations, Inc.,  
Appellant,  
v.  
State of New York,  
Respondent.

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

Mo. No. 2009-193  
In the Matter of Amin Enrique M.  
Jr. et al., &c.

Amin M.,  
Appellant,  
Leake and Watts Services, Inc.,  
Respondent.

Motion for leave to appeal dismissed  
as untimely (see CPLR 5513[b]).  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-174  
The People &c.,  
Respondent,  
v.  
Donell McGuire,  
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-141  
In the Matter of Robert Melendez,  
Appellant,  
v.  
New York State Comptroller,  
et al.,  
Respondents.

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

Mo. No. 2009-91  
Millenium Environmental, Inc.,  
&c.,  
Appellant,  
v.  
City of Long Beach of State of  
New York,  
Respondent.

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

Mo. No. 2009-204  
The People &c.,  
Respondent,  
v.  
Pablo Molina,  
Appellant.

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

Mo. No. 2009-313  
The People &c.,  
Respondent,  
v.  
Mark Ochoa,  
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.

Mo. No. 2009-177  
The People &c.,  
Respondent,  
v.  
James Pasquarelli,  
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-243  
Anna Pezhman,  
Appellant,  
v.  
The City of New York, 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.

Mo. No. 2009-180  
The People &c.,  
Respondent,  
v.  
Kevin L. Proven,  
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-142  
In the Matter of Darren Quinn,  
Appellant,  
v.  
New York State Comptroller  
et al.,  
Respondents.

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

Mo. No. 2009-285  
Luis E. Rivera, Sr.,  
Respondent,  
v.  
Vincent Alaimo et al.,  
Appellants.

Motion for reargument of motion for  
leave to appeal denied.  
Chief Judge Lippman took no part.

Mo. No. 2009-209  
In the Matter of Shelter Island  
Association, et al.,  
Appellants,  
v.  
Zoning Board of Appeals of Town  
of Shelter Island, et al.,  
Respondents.

Motion, insofar as it seeks leave to  
appeal from that portion of the  
Appellate Division order that affirmed  
so much of Supreme Court's order and  
judgment as denied appellants' motion  
to amend the petition, dismissed upon  
the ground that such portion of the  
order does not finally determine the  
proceeding within the meaning of the  
Constitution; motion for leave to  
appeal otherwise denied.

Mo. No. 2009-188  
Michael J. Sirface,  
Respondent,  
v.  
County of Erie,  
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.

Mo. No. 2009-171  
The People &c. ex rel. Joseph G.  
Szymaszek,  
Appellant,  
v.  
State of New York,  
Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that relator has been released on postrelease supervision and, therefore, his liberty is no longer restrained to such a degree as to entitle him to the extraordinary writ of habeas corpus (see People ex rel. Wilder v Markley, 26 NY2d 648 [1970]). Motion for leave to appeal dismissed upon the ground that relator has been released on postrelease supervision and, therefore, his liberty is no longer restrained to such a degree as to entitle him to the extraordinary writ of habeas corpus (see People ex rel. Wilder v Markley, 26 NY2d 648 [1970]).

Mo. No. 2009-338  
The People &c. ex rel. Joseph G.  
Szymaszek,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion for relief ancillary to the motion for leave to appeal and appeal filed as of right herein dismissed on the ground that it does not lie.

Mo. No. 2009-153  
In the Matter of Rosemary  
Toriola,  
Appellant,  
v.  
Supreme Court State of New York  
Appellate Term 2nd and 11th  
Judicial Districts, et al.,  
Respondents.

Motion for reconsideration of this Court's December 2, 2008 dismissal order denied.  
Motion for leave to appeal denied.  
Chief Judge Lippman took no part.

Mo. No. 2009-183  
The People &c. ex rel. Victor  
Woodard,  
                  Appellant,  
                  v.  
William R. Lape, &c.,  
                  Respondent.

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