

June 11, 2009

CASES

1 No. 97
The People &c.,
 Respondent,
 v.
Eric Bailey,
 Appellant.

Order modified by dismissing the count of the indictment charging criminal possession of a forged instrument in the first degree and remitting to Supreme Court, New York County, for resentencing and, as so modified, affirmed.
Opinion by Judge Jones.
Chief Judge Lippman and Judges Ciparick, Graffeo and Read concur.
Judge Pigott dissents in part and votes to affirm in an opinion in which Judge Smith concurs.

1 No. 99
Bloomingdales, Inc.,
 Respondent,
 v.
The New York City Transit
Authority,
 Appellant.
(And Third-Party Actions.)

Order affirmed, with costs, and certified question answered in the affirmative.
Opinion by Judge Pigott.
Judges Ciparick, Graffeo, Read, Smith and Jones concur.
Chief Judge Lippman took no part.

2 No. 145 SSM 14
The People &c.,
 Respondent,
 v.
Jesus Cano,
 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. 86
The People &c.,
 Respondent,
 v.
Wayne Davis,
 Appellant.

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

4 No. 83
In the Matter of Lackawanna
Community Development
Corporation,
 Appellant,
 v.
Frank E. Krakowski, &c., et al.,
 Respondents.

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

2 No. 96
The People &c.,
 Respondent,
 v.
Noel Marte,
 Appellant.

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

1 No. 87
Peter Marc Stern,
 Respondent,
 v.
Andrew Lavoott Bluestone,
 Appellant.

Order reversed, with costs, case
remitted to Supreme Court, New York
County, for further proceedings in
accordance with the memorandum herein
and certified question answered in the
negative.
Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

MOTIONS

3 Mo. No. 2009-479
In the Matter of Lisa Aptaker,
 Appellant,
 v.
Administrative Review Board for
Professional Medical Conduct,
 Respondent.

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

1 Mo. No. 2009-504
Bank of America, N.A.,
 Respondent,
 v.
Sheldon H. Solow,
 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 Mo. No. 2009-491
Lenore Bellinger, &c.,
 Appellant,
 v.
Ballston Spa Central School
District,
 Respondent.

Motion for reargument of motion for
leave to appeal denied.

4 Mo. No. 2009-293
Peter E. Bissell et al.,
 Respondents,
 v.
Town of Amherst,
 Appellant-Respondent.

Town of Amherst,
Third-Party Appellant-Respondent,
 v.
McGonigle & Hilger Roofing
Company,
Third-Party Respondent-Appellant.

Motion by the Town of Amherst for
leave to appeal denied.
Motion by McGonigle & Hilger Roofing
Company, insofar as it seeks leave to
appeal as against plaintiffs from the
November 14, 2008 Appellate Division
order, denied; motion, insofar as it
seeks leave to appeal from the
November 14, 2008 order as against
defendant Town of Amherst, dismissed
upon the ground that such order does
not finally determine the action as to
these parties within the meaning of
the Constitution, and, from other
orders of the Appellate Division, upon
the ground that such orders do not
finally determine the action within
the meaning of the Constitution.
Judge Pigott took no part.

2 Mo. No. 2009-335
Alexander Breytman,
 Appellant,
 v.
Olinville Realty, LLC, et al.,
 Respondents.

Motion for leave to appeal from the
Appellate Division order denying
reargument or leave to appeal to this
Court dismissed upon the ground that
such order does not finally determine
the action within the meaning of the
Constitution.
Motion to enlarge the record denied.

2 Mo. No. 2009-463
Alexander Breytman,
 Appellant,
 v.
Olinville Realty, LLC, et al.,
 Respondents.

Motion, insofar as it seeks leave to
appeal from the March 12, 2009
Appellate Division order, dismissed
upon the ground that such order does
not finally determine the action
within the meaning of the
Constitution; motion, insofar as it
seeks leave to appeal from the March
12, 2009 Supreme Court order,
dismissed upon the ground that it does
not lie (see NY Const, art VI, § 3;
CPLR 5602).

2 Mo. No. 2009-483
The People &c.,
 Respondent,
 v.
Peter Czaplicki,
 Appellant.

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

4 Mo. No. 2009-457
David Christa Construction, Inc.
et al.,
 Respondents,
 v.
American Home Assurance Company,
 Appellant,
et al.,
 Defendants.

Motion for leave to appeal denied.

4 Mo. No. 2009-520
Jane Doe et al.,
 Respondents,
 v.
Roman Catholic Diocese of
Rochester, et al.,
 Appellants.

Motion for reargument denied with one
hundred dollars costs and necessary
reproduction disbursements.

1 Mo. No. 2009-472
Eighth Avenue Garage Corp.,
 Appellant,
 v.
H.K.L. Realty Corp., et al.,
 Defendants,
Lila Scheiner,
 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.

1 Mo. No. 2009-448
In the Matter of Darren F.,
 Respondent,
 v.
Marie-Amina T.,
 Appellant.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or leave to appeal to this Court, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; motion, insofar as it seeks leave to appeal from the Appellate Division order of affirmance, denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2009-489
In the Matter of Frederick
Franklin,
 Appellant,
 v.
Ann Schwartz, Records Access
Officer, &c.,
 Respondent.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]).
Chief Judge Lippman took no part.

4 Mo. No. 2009-460
Mahender R. Goriganti,
 Appellant,
 v.
Syracuse Orthopedic Specialists,
P.C.,
 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.

4 Mo. No. 2009-496
Donald J. Jones, et al.,
 Appellants,
 v.
Town of Carroll et al.,
 Respondents.

Motion for leave to appeal dismissed upon the ground that the Appellate Division order does not finally determine the action within the meaning of the Constitution, and the "so ordered" stipulation does not qualify as a final judgment within the meaning of CPLR 5602(a)(1)(ii) to bring up for review the prior nonfinal Appellate Division order because it was entered into "without prejudice." Judge Pigott took no part.

2 Mo. No. 2009-473
Ilia Kajo et al.,
 Appellants,
 v.
E.W. Howell Co., Inc., et al.,
 Respondents,
et al.,
 Defendant.
(And a Third-Party Action.)

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

1 Mo. No. 2009-507
Gabrielle Lequerique, &c.,
 Appellant,
 v.
Stella Lequerique,
 Respondent,
Lekerika, LLC,
 Defendant.

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

1 Mo. No. 2009-575
Linda Marso,
 Appellant,
 v.
Henry Novak, M.D. et al.,
 Respondents.

Motion for reargument of motion for leave to appeal denied.

2 Mo. No. 2009-367
Mid-Valley Oil Company, Inc.,
 Appellant,
Westport Insurance Corporation,
&c.,
 Intervenor-Plaintiff,
 v.
Hughes Network Systems, Inc.,
&c.,
 Defendant.

Hughes Network Systems, Inc.,
&c.,
 Third-Party Respondent,
 v.
North Star Video, Inc.,
 Third-Party Respondent.

1 Mo. No. 2009-468
In the Matter of Leon St. Clair
Nation,
 Respondent,
 v.
The City of New York, et al.,
 Appellants.

1 Mo. No. 2009-478
Menahem Neuman, &c.,
 Appellant,
et al.,
 Plaintiff,
 v.
Century 21 Department Stores LLC,
 Respondent.

1 Mo. No. 2009-412
Maurice Oparaji,
 Appellant,
 v.
The New York Mortgage Company,
LLC,
 Respondent.

Motion, insofar as it seeks leave to appeal from the Appellate Division order that affirmed Supreme Court's order denying a motion for leave to amend the complaint, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

Motion for leave to appeal granted.

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

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]). Chief Judge Lippman took no part.

3 Mo. No. 2009-383
In the Matter of Steve Pappas,
 Appellant,
et al., Petitioner,
 v.
Lawyers' Fund for Client
Protection, Respondent.

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

1 Mo. No. 2009-348
Nick Pavlou et al.,
 Appellants,
 v.
The City of New York,
 Respondent,
Simon-Ro Corporation,
 Defendant.

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

Simon-Ro Corporation,
 Third-Party Plaintiff,
 v.
Felix Industries, Inc.,
 Third-Party Respondent.
(And Another Third-Party Action.)

1 Mo. No. 2009-456
The People &c.,
 Respondent,
 v.
Avery Pettigrew,
 Appellant.

Motion for leave to appeal granted.
Motion for poor person relief granted.

4 SSD 32
In the Matter of Margaret M.
Potter, et al.,
 Appellants,
et al.,
 Petitioner,
 v.
Town Board of Town of Aurora, et
al.,
 Respondents.
(Appeal No. 1)

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

In the Matter of Margaret M.
Potter, et al.,
 Appellants,
 v.
Town Board of Town of Aurora, et
al.,
 Respondents.
(Appeal No. 2)

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. 2009-404
Mitchel D. Ramos,
 Respondent,
 v.
Alicia Court Enterprises, Inc.,
et al.,
 Defendants;
County of Westchester,
 Nonparty-Appellant.

Appeal dismissed without costs, by the
Court sua sponte, upon the ground that
the order appealed from does not
finally determine the action within
the meaning of the Constitution.

2 SSD 25
State Farm Mutual Automobile
Insurance Company,
 Appellant,
 v.
John Robert Langan, &c.,
 Respondent.

2 Mo. No. 2009-461
The People &c.,
 Respondent,
 v.
Corey Townsend,
 Appellant.

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

4 Mo. No. 2009-539
The People &c. ex rel. John
Trisvan,
 Appellant,
 v.
Harold Graham, &c.,
 Respondent.

Motion for reargument of motion for
leave to appeal denied.

1 SSD 31
Sharon Wechsler,
 Appellant,
 v.
Norman Wechsler,
 Respondent.

Appeal dismissed, without costs, by
the Court sua sponte, upon the ground
that the Appellate Division does not
have the power to grant leave to
appeal to this Court on a certified
question from an order granting a new
trial or hearing (see CPLR 5601[c],
5602[b][1]; Maynard v Greenberg, 82
NY2d 913 [1994]).
Chief Judge Lippman took no part.