

March 31, 2009

CASES

No. 42
Eleanor Duffy,
Appellant,
v.
Dr. James M. Vogel, et al.,
Respondents.
Dr. Allan J. Jacobs,
Defendant.

Order reversed, with costs, and a new trial ordered.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo, Read, Pigott and Jones concur.
Judge Smith dissents in an opinion.

No. 29
Mario Miguel Jaramillo,
Appellant,
v.
Weyerhaeuser Company and
Technology Licensing Associates,
Inc.,
Respondent,
Corrugated Gear and Services,
Inc., et al.
Defendants.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question 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 question answered in the negative.
Opinion by Judge Read.
Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.
Chief Judge Lippman took no part.

No. 34
The People &c.,
Appellant,
v.
William Kalin,
Respondent.

Order reversed and judgment of Criminal Court of the City of New York, Queens County, reinstated.
Opinion by Judge Graffeo.
Judges Read, Smith and Pigott concur.
Judge Ciparick dissents and votes to affirm in an opinion in which Chief Judge Lippman and Judge Jones concur.

No. 46

Charlene McLean, as Mother and
Natural Guardian of Briana Hall,
an Infant, et al.,

Respondents,

v.

The City of New York,

Appellant,

et al.,

Defendants.

Order reversed, with costs, defendant
City of New York's motion for summary
judgment dismissing the complaint
against it granted and certified
question answered in the negative.
Opinion by Judge Smith.
Judges Ciparick, Graffeo, Read, Pigott
and Jones concur.
Chief Judge Lippman took no part.

No. 39

Steven B. Samuel, Esq., et al.,
Respondents-Appellants,

v.

Druckman & Sinel, LLP, et al.,
Appellants-Respondents.

Order modified, with costs to
defendants, by remitting to Supreme
Court, New York County, for further
proceedings in accordance with the
opinion herein and, as so modified,
affirmed, and certified question
answered in the negative.
Opinion by Judge Pigott.
Judges Ciparick, Graffeo, Read, Smith
and Jones concur.
Chief Judge Lippman took no part.

No. 32

In the Matter of 10 East Realty,
LLC, et al.,

Respondents,

v.

Incorporated Village of Valley
Stream, et al.,

Appellants.

Order, insofar as appealed from,
reversed, with costs, and judgment of
Supreme Court, Nassau County,
reinstated.
Opinion by Judge Jones.
Judges Ciparick, Graffeo, Read, Smith
and Pigott concur.
Chief Judge Lippman took no part.

No. 107

Trust for the Certificate Holders
of the Merrill Lynch Mortgage
Investors, Inc. Mortgage Pass-
Through Certificates, Series
1999-C1, by and through Orix
Capital Markets, LLC as Master
Servicer and Special Servicer,
Appellant,

v.

Love Funding Corporation,
Respondent.

Certification of questions by the
United States Court of Appeals for the
Second Circuit, pursuant to section
500.27 of this Court's Rules of
Practice, accepted and the issues
presented are to be considered after
briefing and argument.

Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

MOTIONS

Mo. No. 2009-104
Mary June Bayuk,
Appellant,
v.
Marvin Gilbert, M.D.,
Respondent.

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

Mo. No. 2009-223
In the Matter of Gerald BB.
et al., &c.

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

Schenectady County Department of
Social Services,
Respondent;
Sheila CC.,
Appellant.
(And Other Proceedings.)

Mo. No. 2009-217
The People &c. ex rel. James
Brown,
Appellant,
v.
James Conway, Superintendent of
Attica Correctional Facility,
Respondent.

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

Mo. No. 2009-257
The People &c.,
Respondent,
v.
Michael J. Brown,
Appellant.

Motion to vacate this Court's February 10, 2009 preclusion order granted.

Mo. No. 2009-150
The People &c.,
Respondent,
v.
Anthony Burden,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-118
Awilda Cortez, &c.,
Appellant,
v.
Delmar Realty Co., Inc. et al.,
Respondents.

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

Mo. No. 2009-156
Samuel Cosentino,
Appellant,
v.
Sullivan Papain Block McGrath &
Cannavo, 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.

Mo. No. 2009-63
In the Matter of Thomas D.
(Anonymous),
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.

Mo. No. 2009-241
George Eremeyev et al.,
Appellants,
v.
Manhattan Eye, Ear & Throat
Hospital, et al.,
Respondents.

Motion for reargument of motion for
leave to appeal &c. denied.
Motion for poor person relief
dismissed as academic.
Chief Judge Lippman took no part.

SSD 8
In the Matter of Friendly Car
Wash Main Street, Inc., et al.
Appellants,
v.
Commissioner of Labor,
Respondent.

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

Mo. No. 2009-71
In the Matter of B.G.,
Respondent,
v.
A.M.O.,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-87
In the Matter of John Gebbie,
Respondent,
v.
David Mammia, &c., et al.,
Appellants.

Motion for leave to appeal granted.

Mo. No. 2009-220
Margaret Godfrey, et al.,
Appellants,
v.
Andrew J. Spano, &c., et al.,
Respondents,
New York State Comptroller,
Intervenor-Respondent.

Motion for leave to appeal granted.

Mo. No. 2008-1375
Graphic Arts Mutual Insurance
Company,
Appellant,
v.
John Russell,
Respondent.

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

SSD 9
In the Matter of Michael S. Hale,
Appellant,
v.
Donald Selsky, as Director of
Special Housing and Inmate
Disciplinary Programs,
Respondent.

Appeal dismissed without costs, by the
Court sua sponte, upon the ground that
no appeal lies as of right from the
unanimous judgment of the Appellate
Division absent the direct involvement
of a substantial constitutional
question (CPLR 5601).

Mo. No. 2009-175
The People &c.,
Respondent,
v.
Lorenzo C. Hamilton,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-107
Diane Hughes-Berg et al.,
Appellants,
v.
Michael Mueller,
Defendant,
Incorporated Village of Rockville
Centre, et al.,
Respondents.

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

Mo. No. 2009-126
In the Matter of Christine
Jiminez,
 Appellant,
 v.
Maureen Jiminez,
 Respondent.

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

Mo. No. 2009-148
In the Matter of John D. Justice,
 Appellant,
 v.
George B. Alexander, &c.,
 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.
Motion for poor person relief
dismissed as academic.

Mo. No. 2009-178
KB Operating, LLC, &c.,
 Appellant,
 v.
Margaret W. Briggs, et al.,
 Respondents.

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

Mo. No. 2009-117
Frank LaFerlita et al.,
 Appellants,
 v.
Seagull 2000, Inc. et al.,
 Respondents.

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

Mo. No. 2009-219
Kenneth J. Lewis, et al.,
 Appellants,
 v.
New York State Department of
Civil Service, et al.,
 Respondents.

Motion for leave to appeal granted.

Mo. No. 2009-158
In the Matter of Glenn Maillard,
Appellant,
et al.,
Petitioners,
v.
New York State Teachers'
Retirement System et al.,
Respondents.

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

Mo. No. 2009-160
In the Matter of Bianca M.
et al., &c.

Motion for leave to appeal denied.

Saratoga County Department of
Social Services,
Respondent;
Kevin N.,
Appellant.

Mo. No. 2009-108
In the Matter of Latricia M., &c.

Motion for leave to appeal denied.

Edward M.,
Appellant,
et al.,
Respondent,
Cardinal McCloskey Services,
Respondent.

Mo. No. 2009-95
In the Matter of Victoria Marie
P., &c.

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

Andrew S.P. et al.,
Appellants,
Seamen's Society for Children and
Families,
Respondent.
(And Another Proceeding.)

Mo. No. 2009-129
Emilie Perkins, et al.,
Respondents,
v.
Lisa Kapsokefalos et al.,
Appellants.

Motion for leave to appeal denied.

Mo. No. 2009-89
In the Matter of Barbara
Peterson,
Respondent,
v.
Faculty Student Association
et al.,
Appellants.
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.

Mo. No. 2009-138
Racepoint Partners, LLC et al.,
Appellants,
v.
JPMorgan Chase Bank, N.A.,
Respondent.

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

Mo. No. 2009-96
Lorraine Chanin Rachimi,
Appellant,
v.
Peter Rachimi,
Respondent.

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

Mo. No. 2009-232
Lorraine Chanin Rachimi,
Appellant,
v.
Peter Rachimi,
Respondent.

Motion by the American Academy of
Matrimonial Lawyers, New York Chapter,
for leave to file a brief amicus
curiae on the motion for leave to
appeal herein granted and the brief is
accepted as filed.

Mo. No. 2009-139
In the Matter of Seann Patrick
Riley on Behalf of Paul Germain,
Appellant,
v.
The Honorable Ralph Fabrizio, &c.
et al.,
Respondents.

Motion to vacate this Court's
January 5, 2009 order dismissing the
appeal for failure to prosecute
granted, and appeal reinstated.
On the Court's own motion, appeal
dismissed, without costs, upon the
ground that no substantial
constitutional question is directly
involved.
Chief Judge Lippman took no part.

Mo. No. 2009-248
In the Matter of Julius R.
Ruggiere et al.,
Appellants,
v.
Michael Bloomberg, &c., et al.,
Respondents.

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

Mo. No. 2009-132
Howard Rukeyser,
Appellant,
v.
Leacroft Richardson,
Respondent,
et al.,
Defendant.

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 a stay dismissed as
academic.

Mo. No. 2009-196
Lily Salm,
Appellant,
v.
Mark S. Moses, D.D.S.,
Respondent.

Motion for leave to appeal granted.

Mo. No. 2009-161
The People &c. ex rel. Ernest
Smith,
 Appellant,
 v.
Francisco Rivera, &c.,
 Respondent.

On the Court's own motion, appeal
dismissed without costs, upon the
ground that no substantial
constiutional question is directly
involved.
Motion for leave to appeal denied.
Motion for poor person relief
dismissed as academic.

Mo. No. 2009-86
In the Matter of Paul F. Taylor,
&c., deceased.

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

Mark Taylor, et al.,
 Appellants,
 v.
Sportsman's Den, Inc., et al.,
 Respondents.

Mark Taylor, &c., et al.,
 Appellants,
 v.
George Lambert, &c., et al.,
 Respondents.

Mo. No. 2009-130
The People &c.,
 Respondent,
 v.
Daniel Vives,
 Appellant.

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

Mo. No. 2009-90

David Wadler,
Appellant,

v.

The City of New York et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that dismissed the appeal from Supreme Court's order denying appellant's motion for reargument, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise granted. Chief Judge Lippman took no part.