

May 05, 2009

CASES

No. 61
The People &c.,
Respondent-Appellant,
v.
Julio Borrell, Also Known as
Julio Cesar Borrell,
Appellant-Respondent.

On the People's appeal, order reversed and defendant's application for a writ of error coram nobis denied. Defendant's appeal dismissed as academic. Opinion by Chief Judge Lippman. Judges Ciparick, Graffeo, Read, Smith and Jones concur. Judge Pigott dissents and votes to affirm on the People's appeal and reverse and remit to the Appellate Division on the defendant's appeal in an opinion.

No. 55
Lisa C. Green,
Respondent,
v.
William Penn Life Insurance
Company of New York,
Appellant.

Order reversed, with costs, and case remitted to the Appellate Division, First Department, for consideration of the facts and issues raised but not determined on the appeal to that court. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

No. 56
In the Matter of George Infante,
as Administrator of the Estate of
Rosemary A. Infante, Deceased,
Respondent,
v.
Caroline R. Dignan, M.D., as
Medical Examiner of Monroe County
and Paul D. Gosnick, M.D., in his
official capacity as Deputy
Medical Examiner,
Appellants.

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

No. 70
The People &c.,
Respondent,
v.
Dale F. Leeson,
Appellant.

Order affirmed, in a memorandum.
Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

No. 58
Samuel Passante et al.,
Appellants,
v.
Agway Consumer Products, Inc.,
&c.,
Defendant,
Mullen Industrial Handling Corp.,
et al.,
Respondents.

Judgment appealed from and order of the
Appellate Division brought up for
review modified, without costs, in
accordance with the opinion herein and,
as so modified, affirmed.
Opinion by Judge Pigott.
Chief Judge Lippman and Judges Ciparick
and Jones concur.
Judge Smith dissents in an opinion in
which Judges Graffeo and Read concur.

No. 48
In the Matter of Daniel Peckham,
Appellant,
v.
Judith A. Calogero, as
Commissioner of the State of New
York's Division of Housing and
Community Renewal, et al.,
Respondents.

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

MOTIONS

SSD 16
Amazon.com, LLC and Amazon
Services, LLC,
Appellants,
v.
New York State Department of
Taxation and Finance; Robert L.
Megna, in his Official Capacity
as Commissioner of the New York
State Department of Taxation and
Finance; The State of New York;
and David A. Paterson, in his
Official Capacity as the Governor
of the State of New York,
Respondents.

Mo. No. 2009-289
American Guarantee & Liability
Insurance Company,
Respondent,
v.
Perry A. Lerner et al.,
Appellants.

SSD 18
Barklee 94 LLC,
Appellant,
v.
Jane O'Keefe,
Respondent.

Mo. No. 2009-221
Richard Burke et al.,
Respondents,
v.
John Aspland,
Appellant.

Appeal transferred without costs, by
the Court sua sponte, to the Appellate
Division, First 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]).

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

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

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

Mo. No. 2009-303
Combined Ventures, LLC,
Respondent,
v.
Fiske House Apt. Corp. et al.,
Defendants,
Karen V.M. Smith,
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. Judge Jones took no part.

Mo. No. 2009-377
Susan M. Doyle,
Respondent,
v.
City of Buffalo, et al.,
Appellants.

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

Mo. No. 2009-227
In the Matter of Danny
Echevarria,
Appellant,
v.
Patricia D. Marks, Monroe County
Court Judge,
Respondent.

Motion for leave to appeal granted. Motion for a stay denied as unnecessary upon the ground that respondent has represented that she will not move forward with appellant's case pending disposition of this appeal.

Mo. No. 2009-292
In the Matter of Anthony Ettari,
Respondent,
v.
Brian Fischer, &c., et al.,
Appellants.

Motion for leave to appeal granted.

Mo. No. 2009-215
First American Commercial
Bancorp, Inc.,
Appellant,
v.
Saatchi & Saatchi Rowland, Inc.,
&c., et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as dismissed the complaint as against Vanteon Corporation and CB Richard Ellis, denied; motion for leave to appeal otherwise dismissed upon the ground that the remainder of the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

Mo. No. 2009-229
In the Matter of Woodrow
Flemming,
Appellant,
v.
Frank Rizzo, Howard Songeson and
Hon. James Yates,
Respondents.

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. 2009-247
Raphial Fogarty et al.,
Respondents,
v.
Elizabeth Jordan, also known as
Dorothy Jordan, &c.,
Appellant.

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

Mo. No. 2009-326
Jadwiga Galazka et al.,
Appellants,
v.
WFP One Liberty Plaza Co., LLC,
et al.,
Respondents,
et al.,
Defendant.
(And Third-Party Actions.)

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

Mo. No. 2009-358
Robert Gassman, &c., et al.,
Appellants,
v.
Metropolitan Life Insurance
Company, et al.,
Respondents,
et al.,
Defendants.
(And a Third-Party Action.)

Motion, insofar as it seeks leave to appeal as against defendant The United States Life Insurance Company in the City of New York, denied; motion, insofar as it seeks leave to appeal as against other defendants, dismissed upon the ground that as to said defendants, the Appellate Division order does not finally determine the action within the meaning of the Constitution.

Mo. No. 2009-184
Kevin Glassman &c.,
Respondent,
v.
Pro Health Ambulatory Surgery
Center, Inc. et al.,
Appellants.

Motion for leave to appeal granted.

Mo. No. 2009-195
Kevin Glassman &c.,
Respondent,
v.
Pro Health Ambulatory Surgery
Center, Inc. et al.,
Appellants.

Motion by New York State Association of Ambulatory Surgery Centers, Inc. for leave to file a memorandum of law amicus curiae on the motion for leave to appeal herein granted and the memorandum of law is accepted as filed.

Mo. No. 2009-350
Bernadette Gotay,
Respondent,
v.
David Breitbart, et al.,
Defendants,
Michael Handwerker, et al.,
Appellants.

Motions to vacate this Court's March 11, 2009 dismissal order granted. Chief Judge Lippman took no part.

Mo. No. 2009-189
Heritage Realty Advisors, LLC
et al.,
 Appellants,
 v.
Mohegan Hill Development, LLC,
et al.,
 Respondents,
Tarragon Corporation,
 Defendant.

Motion for leave to appeal as against
all defendants except Tarragon
Corporation, as to whom the motion was
withdrawn, denied.

Mo. No. 2009-316
Steve Huger, et al.,
 Appellants,
 v.
Cushman & Wakefield, Inc., et
al.,
 Respondents.
(And a Third-Party Action.)

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

Mo. No. 2009-242
The People &c. ex rel. Anthony
Jackson,
 Appellant,
 v.
Harold Graham, &c.,
 Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-294
Edward J. Kaneb Jr., et al.,
 Appellants,
 v.
Scott Lamay,
 Respondent.
(And Another Related Action.)

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

Mo. No. 2009-311
In the Matter of Amy K. et al.,
&c.

Administration for Children's
Services,
Respondent,
Wanda K.,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-328
In the Matter of Brittany K.
et al.

Herkimer County Department of
Social Services,
Respondent;
Georgetta K., &c.,
Appellant.

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

Mo. No. 2009-310
Liberty Moving & Storage Company,
Inc.,
Appellant,
v.
Westport Insurance Corporation,
Defendant,
New York State Insurance Fund,
Respondent.

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

Mo. No. 2009-307
In the Matter of Jorge L.
Linares,
Appellant,
v.
Brian Fischer, &c.,
Respondent.

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

Mo. No. 2009-330
In the Matter of William
McKethan,
Appellant,
v.
Norman Bezio, &c.,
Respondent.

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

Mo. No. 2009-321
In the Matter of John Momot,
Appellant,
v.
Rensselaer County, Hudson Valley
Community College,
Respondent.

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

Mo. No. 2009-337
In the Matter of John Momot,
Appellant,
v.
Van Rensselaer Manor,
Respondent.

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

Mo. No. 2009-315
David Murray, et al.,
Appellants,
v.
Stephen Hirsch, &c., et al.,
Respondents.

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

Mo. No. 2009-319
In the Matter of Netsmart
Technologies, Inc.,
Respondent,
v.
Edward D. Bright,
Appellant.

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

SSD 17
Overstock.com, Inc.
Appellant,
v.
The New York State Department of
Taxation and Finance, et al.
Respondents.

Appeal transferred without costs, by
the Court sua sponte, to the Appellate
Division, First 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]).

Mo. No. 2009-262
In the Matter of Anthony
Perretti,
Appellant,
v.
Brian Fischer, &c.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-346
The People &c.,
Respondent,
v.
Theresa Pierce,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-360
In the Matter of Anonymous, an
Applicant for Admission to the
Bar,
Appellant.

On the Court's own motion, appeal
dismissed, without costs, upon the
ground that no substantial
constitutional question is directly
involved.
Motion for leave to appeal denied.

Mo. No. 2009-368
Dahi Raheim & Rawia Shadli,
Appellants,
v.
8835 23rd Avenue Tenants Corp.,
Cropsey Bay Estates,
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. 2009-312
In the Matter of R. (Anonymous)
Children.
Administration for Children's
Services,
Respondent;
Ishwardat R. (Anonymous),
Appellant;
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 proceeding within the meaning of the Constitution.

Mo. No. 2009-275
In the Matter of Cassidy Sue R.
(Anonymous).
Administration for Children's
Services, et al.,
Respondents;
Manuel (Emmanuel) R. (Anonymous),
Appellant;
et al.,
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. 2009-333
In the Matter of Pamela I.S.
(Anonymous),
Respondent,
v.
Edmund O.E. (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. 2009-343
Ralph L. Savage et al.,
Appellants,
v.
Vincent Desantis,
Respondent.

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

Mo. No. 2009-258
Phillis Lu Simpson, Esq.,
Appellant,
v.
The Village Voice, Inc., et al.,
Respondents.

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

Mo. No. 2009-398
In the Matter of Stop the
Madrassa Community Coalition
et al.,
Appellants,
v.
New York City Department of
Education et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that it does not lie (see NY Const, art VI, § 3[b]; CPLR 5602).

SSD 19
Delvin Sweeney,
Respondent,
v.
Bruckner Plaza Associates, et al.
Appellants,
JNS Recovery Corp., et al.,
Defendants.

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.

Mo. No. 2009-230
In the Matter of Walter K.
Telfer,
 Appellant,
 v.
Nicole L. Pickard,
 Respondent.

Motion, insofar as it seeks leave to
appeal from that portion of the
Appellate Division order that affirmed
the dismissal of the enforcement
application, dismissed upon the ground
that such part 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. 2009-332
The People &c. ex rel.
Christopher VanGuilder,
 Appellant,
 v.
Larry Sears, &c.,
 Respondent.

Motion for leave to appeal denied.