

January 12, 2010

CASES

2 No. 57 SSM 57
The People &c., ex rel. Howard
Glenn Blake, alleged to be Larry
Wayne Barnett,
 Appellant,
 v.
George E. Pataki, etc.
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, without costs, and certified question not answered upon the ground that it is unnecessary, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2 No. 55 SSM 51
In the Matter of Emrey
Properties, Inc.,
 Respondent,
 v.
Patricia A. Baranello, &c.,
et al.,
 Appellants.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and matter remitted to the Appellate Division, Second Department, for consideration of issues raised but not considered on the appeal to that court. The Zoning Board's determination, upholding the Planning Board's denial of a building permit for petitioner to intensify an existing nonconforming use, was not arbitrary, capricious, or contrary to the Town Code (see generally Matter of Pecoraro v Board of Appeals of Town of Hempstead, 2 NY3d 608, 612-613 [2004]).
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2 No. 56 SSM 56
The People &c.,
 Respondent,
 v.
Roland Ramos,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and a new trial ordered on the charges of scheme to defraud in the first degree and petit larceny, and the indictment otherwise dismissed without prejudice to an application by the People, if they be so advised, for leave to resubmit the charge of grand larceny in the fourth degree to another Grand Jury, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

MOTIONS

3 Mo. No. 2009-1220
Lillian Aaron, et al.,
 Respondents,
 v.
Steven Aaron,
 Appellant.

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

3 Mo. No. 2009-1396
The People &c.,
 Respondent,
 v.
Saddiq Abdur-Rashid,
 Appellant.

Motion for assignment of counsel granted and Peter B. Meadow, Esq., PO Box 63, Woodbourne, NY 12788 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2009-1170
The People &c.,
 Respondent,
 v.
David Barrow,
 Appellant.

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

2 Mo. No. 2010-11
The People &c.,
 Respondent,
 v.
Calvin Battles,
 Appellant.

Motion for assignment of counsel granted and Steven Banks, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2009-1352
The People &c.,
 Respondent,
 v.
Tashiem Bayard,
 Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2009-1347
The People &c.,
 Respondent,
 v.
David Brown,
 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.

3 Mo. No. 2009-1249
In the Matter of Delano Brown,
 Appellant,
 v.
New York State Board of Parole,
 Respondent.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2009-1385
The People &c.,
 Appellant,
 v.
Lynette Caban,
 Respondent.

Motion by respondent to file a supplemental brief and appendix granted, two copies of the supplemental brief and appendix to be served and an original and 24 copies to be filed within seven days. Appellant may serve three copies and file an original and 24 copies of a reply brief on or before January 26, 2010.

2 Mo. No. 2009-1210
In the Matter of Zhuang Li Cai,
 Appellant,
 v.
M.D. Jamil Uddin,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2009-1177
In the Matter of Rui Zen Cao,
 Respondent,
 v.
New York City Department of
Housing Preservation and
Development et al.,
 Appellants.

Motions for leave to appeal denied.

3 Mo. No. 2009-1297
The People &c.,
 Respondent,
 v.
Eric Chatham,
 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.

4 Mo. No. 2009-1191
In the Matter of Sandra Mary Chrysler,
 Appellant,
 v.
Leonard Adam Fabian, Sr., et al.,
 Respondents.

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

2 Mo. No. 2009-1376
The People &c.,
 Respondent,
 v.
John P. Daly,
 Appellant.

Motion by defendant, insofar as it seeks to strike or redact the People's brief and appendix, denied; motion, insofar as it seeks an extension of time to file a reply brief, granted, defendant's reply brief to be served and filed on or before January 26, 2010. Cross motion by the People to redact defendant's brief denied.

2 Mo. No. 2009-1245
The People &c.,
 Respondent,
 v.
Alvin Davis,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2009-1208
In the Matter of Brayanna G. and
Mariah S.

Motion for leave to appeal denied.

Wyoming County Department of
Social Services,
Respondent;
Crystal G. et al.,
Respondents,
Anthony J.G.,
Appellant.

1 Mo. No. 2009-1269
Marvin Gibbs,
Respondent,
v.
St. Barnabas Hospital,
Respondent,
Fausto Vincas, M.D.,
Appellant,
Scott Russo, M.D., et al.,
Defendants.

Motion to vacate this Court's November
17, 2009 dismissal order granted.

4 Mo. No. 2009-1212
In the Matter of John Gordon,
Appellant,
v.
Harold Graham, &c. et al.,
Respondents.

Motion for leave to appeal denied.

1 SSD 1
In the Matter of Sylvie Grimm,
Respondent,
v.
State of New York Division of
Housing and Community Renewal
Office of Rent Administration,
Appellant,
151 Owners Corp.,
Intervenor-Appellant.

Appeals 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.

1 Mo. No. 2010-23
Debra H.,
 Appellant,
 v.
Janice R.,
 Respondent.

Motion by New Yorkers for
Constitutional Freedoms, Ltd. 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.

1 Mo. No. 2009-1358
The People &c.,
 Respondent,
 v.
Eric Hollis,
 Appellant.

Motion for assignment of counsel
granted and Richard M. Greenberg,
Esq., Office of the Appellate
Defender, 11 Park Place, Suite 1601,
New York, NY 10007 assigned as counsel
to the appellant on the appeal herein.

1 Mo. No. 2009-1371
The People &c.,
 Respondent,
 v.
Terence G. Jordan,
 Appellant.

Motion for assignment of counsel
granted and Steven Banks, Esq., The
Legal Aid Society, 199 Water Street,
New York, NY 10038 assigned as counsel
to the appellant on the appeal herein.

2 Mo. No. 2009-1181
In the Matter of Royce K.
(Anonymous).

Administration for Children's
Services,
 Respondent;
Fern L. (Anonymous),
 Appellant.
(And Another Proceeding).

Motion for leave to appeal denied.
Motion for poor person relief
dismissed as academic.
Chief Judge Lippman took no part.

1 Mo. No. 2009-1360
Hon. Susan Larabee, et al.,
 Respondents-Appellants,
 v.
Governor of the State of New
York,
 Defendant,
New York State Senate, et al.,
 Appellants-Respondents.

Motion by Asian American Bar
Association of New York 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 24 copies filed within seven days.
Chief Judge Lippman took no part.

3 Mo. No. 2009-1198
The People &c.,
 Respondent,
 v.
Andrew W. Lerch,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2009-1199
In the Matter of Herbert Long,
 Appellant,
 v.
Frances Woodruff, &c., et al.,
 Respondents.

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

2 Mo. No. 2010-40
In the Matter of H.M.
(Anonymous),
 Appellant,
 v.
E.T. (Anonymous),
 Respondent.

Motion by New York County Lawyers'
Association for leave to appear amicus
curiae on the appeal herein granted
only to the extent that the proposed
brief is accepted as filed.

4 Mo. No. 2009-1226
In the Matter of Seth M. et al.

Jefferson County Department of
Social Services,
 Respondent;
Margo B.,
 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.

2 Mo. No. 2009-1211
The People &c.,
 Respondent,
 v.
James McKee,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2009-1081
McNamee Construction Corp.,
 Appellant,
 v.
City of New Rochelle,
 Respondent,
et al.,
 Defendants.
(And a Third-Party Action.)

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

1 Mo. No. 2009-1156
Eugene Miniero, et al.,
 Appellants,
 v.
The City of New York, et al.,
 Respondents.
(And Other Actions.)

Motion by plaintiffs Sblendido, Parisi
and Hernandez for leave to appeal
denied.
Motion by plaintiffs Miniero,
Pepitone, Wilhelm, DePalma and
Carroll, insofar as it seeks leave to
appeal against defendant Mine Safety
Appliances Company, dismissed as
untimely (see CPLR 5513 [b]; Matter of
Haverstraw Park, Inc. v Runcible
Props. Corp., 33 NY2d 637 [1973]);
motion for leave to appeal otherwise
denied.

2 Mo. No. 2009-1262
In the Matter of Koontie Mohabir,
 Appellant,
 v.
Kumar Singh,
 Respondent.

Motion for reargument of motion for
leave to appeal denied.

2 Mo. No. 2009-1149
In the Matter of Attallah N.
(Anonymous).

Motion for leave to appeal denied.

Administration for Children's
Services,
 Respondent;
Melvin Shamm L. (Anonymous),
 Appellant;
et al.,
 Respondent.
(And Seven Other Proceedings.)

3 Mo. No. 2010-18
In the Matter of New York State
Office of Children and Family
Services, et al.
 Respondents,
 v.
Lauren Lanterman, et al.
 Appellants.

Motion by Civil Service Employees
Association, Inc., Local 1000, AFSCME,
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
24 copies filed within seven days.

3 Mo. No. 2010-19
In the Matter of New York State
Office of Alcoholism and
Substance Abuse Services et al.,
 Appellants,
 v.
Victor Ortiz et al.,
 Respondents.

Motion by Civil Service Employees
Association, Inc., Local 1000, AFSCME,
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
24 copies filed within seven days.

3 Mo. No. 2009-1188
In the Matter of Elijah NN., &c.

Delaware County Department of
Social Services,
 Respondent;
Lynett NN.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2009-1196
Dan Rather,
 Appellant,
 v.
CBS Corporation, et al.,
 Respondents.

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

3 SSD 2
In the Matter of Ignacio Reynoso,
 Appellant,
 v.
George B. Alexander, as Chair of
the Division of Parole,
 Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (CPLR 5601). CPLR 5515 does not provide a jurisdictional basis to appeal as of right. Additionally, contrary to appellant's assertion, this Court did not grant him leave to appeal to this Court.

1 Mo. No. 2009-1255
Iqbal Singh,
 Appellant,
 v.
The City of New York Division of
Housing Preservation and
Development,
 Respondent.

Motion for reargument of motion for leave to appeal denied.

2 Mo. No. 2009-1203
The People &c,
 Respondent,
 v.
Leon Smith,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2009-1086
Barbara Stewart, &c.,
 Respondent,
 v.
Guy E.C. Maitland, et al.,
 Appellants,
Dunoon, LLC, et al.,
 Defendants.

Motion, insofar as defendants Maitland and Guida seek leave to appeal, dismissed upon the ground that as to these defendants, the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion, insofar as defendants International Registries, Inc. and Oban, LLC seek leave to appeal, denied.

1 Mo. No. 2009-1356
The People &c.,
 Respondent,
 v.
Nathaniel Syville,
 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.

2 Mo. No. 2009-1190
In the Matter of TransGas Energy
Systems, LLC,
 Appellant,
 v.
New York State Board on Electric
Generation Siting and
Environment, et al.,
 Respondents.

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

4 Mo. No. 2009-1218
In the Matter of Jeffrey
Williams,
 Appellant,
 v.
Warren D. Barkley, &c.,
 Respondent.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution.

1 Mo. No. 2009-1264
The People of the State of New
York,
 Respondent,
 v
Diane Word,
 Appellant.

Motion for reargument denied.