

JUNE 5, 2008

CASES

1 No. 85
Teofilo Araujo, et al.,
 Appellants,
 v.
Tiano's Construction Corp., et
al.,
 Respondents,
et al.,
 Defendants.
(And a Third-Party Action.)

Order modified, with costs to plaintiffs,
by reinstating the causes of action for
breach of contract and suretyship and, as
so modified, affirmed.
Opinion by Judge Smith.
Chief Judge Kaye and Judges Ciparick,
Graffeo, Read, Pigott and Jones concur.

1 No. 84
Anthony Cox, et al.,
 Respondents,
 v.
NAP Construction Company, Inc.,
 Appellant,
St. Paul Mercury Insurance
Company et al.,
 Defendants,
Greenwich Insurance Company,
 Respondent.
(And Other Actions)

Order affirmed, with costs, and certified
question answered in the affirmative.
Opinion by Judge Smith.
Chief Judge Kaye and Judges Ciparick,
Graffeo, Read, Pigott and Jones concur.

2 No. 105
Fair Price Medical Supply Corp.,
as Assignee of Cesar Niveló,
 Respondent,
 v.
Travelers Indemnity Company,
 Appellant.

Order affirmed, with costs, and certified
question answered in the affirmative.
Opinion by Judge Read.
Chief Judge Kaye and Judges Ciparick,
Graffeo and Jones concur.
Judge Smith dissents in an opinion in
which Judge Pigott concurs.

No. 83
In the Matter of Donald Feola,
Respondent,
v.
Patrick J. Carroll, &c. et al.,
Appellants.

Judgment appealed from and order of the Appellate Division brought up for review reversed, with costs, and petition dismissed.
Opinion by Judge Pigott.
Chief Judge Kaye and Judges Ciparick, Read and Smith concur.
Judge Graffeo dissents and votes to affirm in an opinion in which Judge Jones concurs.

2 No. 132 SSM 12
Chevonna Johnson,
Appellant,
v.
Susan Kling, et al.,
Defendants,
GMAC Leasing Corp., et al.,
Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, motion of defendants GMAC Leasing Corp., General Motors Acceptance Corp. and Vault Trust Corp. to dismiss the complaint against them denied, and certified question answered in the negative (see Jones v Bill, NY3d [decided today]).
Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2 No. 89
David Charles Jones, Jr.,
Appellant,
v.
Jessica A. Bill, et al.,
Respondents.

Order reversed, with costs, and motion to dismiss plaintiff's amended complaint against defendant DCFS Trust denied.
Opinion by Chief Judge Kaye.
Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

2 No. 131 SSM 9
Deira Rawlings, &c.,
Appellant,
v.
National Car Rental System, Inc.,
et al.,
Defendants;
Alamo Financing, L.P. et al.,
Nonparty-Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, plaintiff's cross motion for leave to amend the complaint to add Alamo Financing, L.P. and ANC Rental Corporation as additional defendants granted, and certified question answered in the negative (see Jones v Bill, NY3d [decided today]).
Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

3-10 Mo. No. 267
The People &c., Respondent,
v.
Bruce Carey, Appellant.

Motion, insofar as it seeks leave to appeal from that part of the Appellate Division order that affirmed the July 2006 Supreme Court order, dismissed upon the ground that appellant is not a party aggrieved (see CPLR 5511); motion for leave to appeal otherwise dismissed upon the ground that the remaining portion of the Appellate Division order does not finally determine the proceeding within the meaning of the Constitution.

2-10 Mo. No. 371
In the Matter of Oluwatoyin
Chukwuogo, Respondent,
v.
Nonyelu Chukwuogo, Appellant.

Motion for leave to appeal denied.

4-10 Mo. No. 520
Covanta Niagara, L.P., Appellant,
v.
Town of Amherst Garbage and
Refuse District #1, Respondent.

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

2-10 Mo. No. 397
In the Matter of William Cruz, Appellant,
v.
Carolina Cruz, Respondent.

Motion for leave to appeal denied.

Mo. No. 621 SSD 31
In the Matter of Donald E.
Gaitor,
Respondent,
v.
Barbara R. Morrissey,
Appellant.
(And Six Other Related
Proceedings.)

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

Mo. No. 601 SSD 30
In the Matter of Samuel R.
Giglia,
Appellant,
v.
Carl Hunt, Superintendent,
Groveland Correctional Facility,
Respondent.

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

1 Mo. No. 664
Linda R. Graev,
Respondent,
v.
Lawrence Graev,
Appellant.

Lawrence Graev,
Appellant,
v.
Linda R. Graev,
Respondent.

Motion by New York Chapter of the American Academy of Matrimonial Lawyers 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.

2-13 Mo. No. 445
Louis Anthony Graffeo,
Respondent,
v.
Debra Carol Paciello, &c.,
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 (see Karger, Powers of the New York Court of Appeals 5:3, at 109 [3d ed rev]).

Mo. No. 381
Lisa C. Green,
Respondent,
v.
William Penn Life Insurance
Company of New York,
Appellant.

Motion to dismiss appeal denied.

Mo. No. 510
In the Matter of Virginia
Henneberry,
Appellant,
v.
ING Capital Advisors, LLC,
et al.,
Respondents.

Motion for reargument denied.

Mo. No. 589
The People &c.,
Respondent,
v.
Jorge Hernandez,
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.

2- Mo. No. 436
HSBC Bank USA, N.A.,
Respondent,
v.
Barbara Scharf,
Appellant,
et al.,
Defendants.

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.

3-10 Mo. No. 476
In the Matter of Daniela Javier,
Appellant.
Commissioner of Labor,
Respondent.

Motion for leave to appeal denied.

2-10 Mo. No. 442
The People &c., Respondent,
v.
Shawn Jordan, Appellant.

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

Mo. No. 665
The People &c., Respondent,
v.
L. Dennis Kozlowski, Appellant.

The People &c., Respondent,
v.
Mark H. Swartz, Appellant.

Motion by New York Council of Defense
Lawyers for leave to appear amicus
curiae on the appeals 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.

Mo. No. 675
Richard L. Kramer, etc., et al., Respondents,
v.
W10Z/515 Real Estate Limited
Partnership, et al., Appellants.

Kerusa Co. LLC, Respondent,
v.
W10Z/515 Real Estate Limited
Partnership, et al., Appellants.

Motion by The Real Estate Board of New
York, Inc. for leave to file a brief
amicus curiae on the appeal herein
granted. Two copies of the brief must be
served and 24 copies filed within seven
days.

1-13 Mo. No. 459
Dunnie Lai, et al., Respondents,
v.
H.J. Gartlan, Jr., &c., Appellant,
Ricky Leung, et al., Defendants.

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.

1-10 Mo. No. 388
Larry Langer,
Appellant,
v.
Siraj Dadabhoy et al.,
Respondents.

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

4-10 Mo. No. 482
The People &c.,
Respondent,
v.
David Leffew,
Appellant.

Motion for leave to appeal denied.

3-10 Mo. No. 358
In the Matter of Robert C. Lewis,
Appellant,
v.
Ashley VanWormer,
Respondent.
(And Five Other Related
Proceedings.)

Motion for leave to appeal denied.

2-10 Mo. No. 414
Luna Lighting, Inc.,
Appellant,
v.
Just Industries, Inc.,
Respondent,
et al.,
Defendants.

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

Mo. No. 653
The People &c.,
Respondent,
v.
Donald Mills,
Appellant.

Motion for assignment of counsel granted and Philip Rothschild, c/o Frank H. Hiscock Legal Aid Society, 351 S. Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

4-10 Mo. No. 417
County of Monroe, Plaintiff,
v.
Raytheon Company, et al.,
Defendants.

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

Federal Insurance Company,
et al.,
Third-Party Appellants,
v.
John P. Bell & Sons, Inc.,
et al.,
Third-Party Respondents.

Mo. No. 619
James J. Moran and Kathleen D. Moran,
Respondents,
v.
Mehmet Erk and Susan Erk,
Appellants.

Motion by New York State Association of Realtors, Inc. for leave to file a brief amicus curiae on the appeal herein granted. Two copies of the brief must be served and 24 copies filed within seven days.

2-13 Mo. No. 440
Orra Realty Corp.,
Respondent,
v.
Thomas J. Gillen, &c., et al.,
Appellants,
et al.,
Defendants,
Suzann Blanco Rogers, &c.,
Respondent.

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

2-10 Mo. No. 466
The People &c.,
Respondent,
v.
Kenneth Ortega,
Appellant.

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

1-10 Mo. No. 405
The People &c., Respondent,
v.
Rene Otero,
Appellant.

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

3-10 Mo. No. 412
Joan E. Peebles, Respondent,
v.
Robert M. Peebles Jr. et al.,
Respondents,
et al., Defendants,
David Peebles,
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.

1-13 Mo. No. 393
The People of the State of New
York by Eliot Spitzer, &c., et
al., Respondents,
v.
Maurice R. Greenberg, 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 (see Karger, Powers of the
New York Court of Appeals 5:18, at 151-
152 [3d ed rev]).

American International Group,
Inc.,
Nonparty-Appellant.

1-10 Mo. No. 450
The People &c., Respondent,
v.
Juan Robles,
Appellant.

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

2-10 Mo. No. 437
Ida Shaperonovitch, et al.,
Respondents,
v.
City of New York,
Appellant.

Motion for leave to appeal granted.

2-10 Mo. No. 438
In the Matter of Richard Simpson,
Appellant,
v.
Beata Ptaszynska,
Respondent.

Motion for leave to appeal denied.

1-10 Mo. No. 474
In the Matter of Jeffrey Solomon,
Appellant,
Zane and Rudofsky,
Petitioner,
v.
The Department of Buildings of
the City of New York et al.,
Respondents.

Motion for leave to appeal denied.

2-10 Mo. No. 463
The People &c.,
Respondent,
v.
Edward L. Stevens, Jr.,
Appellant.

Motion for leave to appeal denied.