

State of New York
Court of Appeals

Decisions

June 3, 2021

CASES

1 No. 39
Himmelstein, McConnell, Gribben, Donoghue
& Joseph, LLP, et al.,
 Appellants,
 v.
Matthew Bender & Company, Inc., &c.,
 Respondent.

Order affirmed, with costs.
Opinion by Judge Rivera.
Chief Judge DiFiore and Judges Stein, Garcia and
Wilson concur.
Judge Fahey dissents in part in an opinion.

2 No. 41
The People &c.,
 Respondent,
 v.
Joseph Schneider,
 Appellant.

Order affirmed.
Opinion by Chief Judge DiFiore.
Judges Stein, Fahey and Garcia concur.
Judge Wilson dissents in an opinion, in which Judge
Rivera concurs.

 No. 34
Charlene Simmons,
 Appellant,
 v.
Trans Express Inc.,
 Respondent.

Following certification of a question by the United
States Court of Appeals for the Second Circuit and
acceptance of the question by the Court pursuant to
section 500.27 of this Court's Rules of Practice,
certified question answered in accordance with the
opinion herein.
Opinion by Judge Stein.
Chief Judge DiFiore and Judges Fahey and Garcia
concur.
Judge Rivera dissents in an opinion, in which Judge
Wilson concurs.

MOTIONS

2 Mo. No. 2021-167
In the Matter of 55 Wainscott Hollow, LLC,
 Respondent,
 v.
Planning Board of the Town of East
Hampton,
 Respondent,
Alan Cohen, et al.,
 Intervenors-Appellants.

Motion for leave to appeal denied.

1 Mo. No. 2021-246
In the Matter of 151st St. Discount Liquors,
Inc.,
 Appellant,
 v.
New York State Liquor Authority,
 Respondent.

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

2 Mo. No. 2021-214
1710 Realty, LLC,
 Appellant,
 v.
Portabella 308 Utica, LLC et al.,
 Respondents.

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

1 Mo. No. 2021-238
Bellstell 7 Park Avenue, LLC,
 Respondent,
 v.
The Seven Park Avenue Corporation,
 Appellant.

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

1 Mo. No. 2021-226
Julia Bonem,
Appellant,
v.
William Penn Life Insurance Company of
New York,
Respondent.

Motion for leave to appeal granted.

1 Mo. No. 2021-258
Dawn Borges,
Appellant,
v.
Louis Rose, &c., et al.,
Respondents.

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

3 Mo. No. 2021-242
Darryl Briggs,
Appellant,
v.
State of New York Department of Corrections
and Community Supervision, et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that it does not lie.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2021-191
In the Matter of Brookdale Senior Living
Solutions et al.,
Appellants,
v.
Town of Colonie Board of Assessment
Review, et al.,
Respondents.
(And Another Related Proceeding.)

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

2 Mo. No. 2021-205
William Bura et al.,
Appellants,
v.
Westfair Corp., 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.

3 Mo. No. 2021-234
In the Matter of Jason Clarke,
 Appellant,
 v.
Anthony J. Annucci, &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.

1 Mo. No. 2021-276
Betty Cohen et al.,
 Appellants,
 v.
Sive, Paget & Riesel, P.C.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-249
In the Matter of DCH Auto, &c. et al.,
 Appellants,
 v.
Town of Mamaroneck, &c., et al.,
 Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2021-260
In the Matter of DCH Auto, &c. et al.,
 Appellants,
 v.
Town of Mamaroneck, &c., et al.,
 Respondents.

Motion by Wakefern Food Corporation for leave to appear amicus curiae on the motion for leave to appeal herein granted and the memorandum of law is accepted as filed.

2 Mo. No. 2021-311
In the Matter of DCH Auto, &c. et al.,
 Appellants,
 v.
Town of Mamaroneck, &c., et al.,
 Respondents.

Motion by International Council of Shopping Centers, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted and the memorandum of law is accepted as filed.

2 Mo. No. 2021-312
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by CVS Albany LLC, et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

2 Mo. No. 2021-322
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by Stop & Shop Supermarket Company, LLC for leave to appear amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

1 Mo. No. 2021-228
Adam DiCoby,
Appellant,
v.
Syracuse University,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2021-237
In the Matter of the Claim of Timothy Doster,
Respondent.
Fundamental Labor Strategies,
Appellant.
Commissioner of Labor,
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.

1 Mo. No. 2021-281
Michael Eisenberg,
Appellant,
v.
Miriam Weisbecker,
Respondent.

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

2 Mo. No. 2021-310
In the Matter of Ferncliff Cemetery
Association,
Appellant,
v.
Town of Greenburgh, et al.,
Respondents.

Motion for leave to appeal denied.
Chief Judge DiFiore took no part.

1 Mo. No. 2021-232
Marie Foran, &c.,
Appellant,
v.
Computershare, Inc.,
Respondent,
et al.,
Defendant.

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

4 Mo. No. 2021-208
The People &c.,
Respondent,
v.
Christopher Freeman,
Appellant.

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

2 Mo. No. 2021-177
Goshen Mortgage, LLC, &c.,
Appellant,
v.
Carmine DePalma, et al.,
Respondents,
et al.,
Defendants.

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

2 Mo. No. 2021-197
In the Matter of Kevin Griffin,
 Appellant,
 v.
Charles Carnes,
 Respondent.

Motion for leave to appeal insofar as it seeks leave to appeal from the portions of the Appellate Division order denying the motion for leave to appeal to that Court and the applications for poor person relief and assignment of counsel, dismissed upon the ground that such portions of the order sought to be appealed from do 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.

4 Mo. No. 2021-303
In the Matter of Nino H.

Motion for leave to appeal denied.

Onondaga County Department of Children
and Family Services,
 Respondent;
Danielle F.,
 Appellant,
et al.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2021-194
In the Matter of Stanley Karol,
 Appellant,
 v.
New York City Office of Administrative
Trials and Hearings, et al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-171
In the Matter of Mohammed Khan,
 Appellant,
 v.
Anthony J. Annucci, &c.,
 Respondent.

2 Mo. No. 2021-216
Kirchhoff-Consigli Construction
Management, LLC,
Appellant,
v.
Dharmakaya, Inc.,
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.

2 Mo. No. 2021-253
Feng Li,
Appellant,
v.
Diana Peng, &c., 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.

2 Mo. No. 2021-275
The People &c. ex rel. Leonidas Lucien,
Appellant,
v.
Superintendent, Fishkill Correctional Facility,
&c.,
Respondent.

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

3 Mo. No. 2021-220
In the Matter of Gerard M. Lynch,
Appellant,
v.
NYS Justice Center for the Protection of
People with Special Needs,
Respondent.

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

2 Mo. No. 2021-313
Linda Macchi, &c.,
Appellant,
v.
State of New York,
Respondent.

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

2 Mo. No. 2021-332
Nella Manko,
 Appellant,
 v.
Lenox Hill Hospital,
 Respondent.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution.
Motion for poor person relief dismissed as academic. Chief Judge DiFiore took no part.

1 Mo. No. 2021-266
Barry McGowan,
 Appellant,
 v.
Clarion Partners, LLC,
 Respondent.

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

1 Mo. No. 2021-233
In the Matter of Adrianna Medina,
 Appellant,
 v.
Dermot F. Shea, &c., et al.,
 Respondents.

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

1 Mo. No. 2021-274
Seth Mitchell,
 Appellant,
 v.
Cigna Corporation, et al.,
 Respondents.

Motion for reargument denied.

3 Mo. No. 2021-200
In the Matter of Julian Murray,
 Appellant,
 v.
New York State Department of Corrections
and Community Supervision,
 Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed the Supreme Court judgment, denied; 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.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2021-289
Adrian Perez, et al.,
 Respondents,
 v.
Masonry Services, Inc., et al.,
 Respondents,
Lettire Construction Corp.,
 Appellant,
et al.,
 Defendants.

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

3 Mo. No. 2021-199
In the Matter of the Claim of Gheorghe Petre,
 Appellant,
 v.
Allied Devices Corp. et al.,
 Respondents.
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.

1 Mo. No. 2021-217
In the Matter of Eugenia Pinkard,
 Appellant,
 v.
New York City Department of Education et
al.,
 Respondents.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).

1 Mo. No. 2021-255
Hugh Raphael,
 Appellant,
 v.
Vintage Grape & Grog, Ltd.,
 Respondent.

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

1 Mo. No. 2021-202
Rein L.P.,
 Appellant,
 v.
State of New York et al.,
 Respondents.

Motion for leave to appeal dismissed as untimely
(*see* CPLR 5513 [b]; 2103 [b] [2]).
Judge Rivera took no part.

3 Mo. No. 2021-219
In the Matter of Rotimi Salu,
 Appellant,
 v.
NYS Justice Center for the Protection of
People with Special Needs,
 Respondent.

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

1 Mo. No. 2021-227
Schlam Stone & Dolan LLP,
 Respondent,
 v.
Robert I. Toussie,
 Appellant,
et al.,
 Defendants.

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

2 Mo. No. 2021-244
The People &c.,
 Respondent,
 v.
Gregory Selby,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-256
Daniel Shatz, &c.,
Respondent,
v.
Douglas Chertok et al.,
Appellants,
Vast Ventures V LP et al.,
Defendants,
Vast Ventures VI LLC,
Nominal Defendant.

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

1 Mo. No. 2021-230
The People &c.,
Respondent,
v.
Randolph W. Smalls, Jr.,
Appellant.

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

1 Mo. No. 2021-210
In the Matter of the Estate of Wanda Tarka,
&c.

Melanie Tarka, &c.,
Appellant.

Motion for leave to appeal &c. dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

1 Mo. No. 2021-211
In the Matter of the Estate of Mark Tarka, &c.

Melanie Tarka, &c.,
Appellant.

Motion for leave to appeal &c. 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. 2021-143

Anthony Vaccaro,
Respondent,

v.

Town of Islip,
Appellant,
County of Suffolk,
Respondent,

et al.,
Defendant.

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

3 Mo. No. 2021-174

In the Matter of the Claim of Amanda K.
Vignone,

Respondent.

Peregrine Enterprises, Inc., &c.,

Appellant.

Commissioner of Labor,

Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2021-201

Waterview Towers, Inc.,
Respondent,

v.

2610 Cropsey Development Corp.,
Appellant,

et al.,

Defendants.

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

1 Mo. No. 2021-187

William Weinrauch,
Appellant,

v.

New York Life Insurance Company,
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.

2 Mo. No. 2021-218
Scott White et al.,
Appellants,
v.
Mark P. Plexousakis, &c., 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.

3 Mo. No. 2021-149
In the Matter of the Women's Project and
Productions, Inc.,
Appellant,
v.
Commissioner of Labor,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-257
Tammy M. Wood,
Appellant,
v.
Nathaniel Charles Brownlee,
Appellant,
Stellar Distribution Services, Inc., &c.,
Respondent.

Motions for leave to appeal denied.

Michael J. Van Aernam,
Appellant,
v.
Nathaniel Charles Brownlee,
Appellant,
Stellar Distribution Services, Inc., &c.,
Respondent.

2 Mo. No. 2021-224
The People &c.,
Respondent,
v.
Ekins Worrell,
Appellant.

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

1 Mo. No. 2021-241
Anastasia Xenias, &c.,
 Appellant,
 v.
Mount Sinai Health System Inc., et al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-161
In the Matter of Board of Education of
Yonkers City School District,
 Appellant,
 v.
Yonkers Federation of Teachers,
 Respondent.

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