

State of New York
Court of Appeals

Decisions

May 6, 2021

CASES

No. 29

The People &c.,
Appellant,
v.
Charo N. Allen,
Respondent.

Order reversed and case remitted to District Court, Suffolk County, First District, for further proceedings in accordance with the opinion herein.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Stein and Fahey concur.
Judge Rivera dissents in an opinion, in which Judge Wilson concurs in a separate dissenting opinion.

No. 28

The People &c.,
Appellant,
v.
Kieth Brooks, &c.,
Respondent.

Order reversed and case remitted to Criminal Court of the City of New York, Bronx County, for further proceedings in accordance with the opinion herein.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Stein and Fahey concur.
Judge Rivera dissents in an opinion, in which Judge Wilson concurs in a separate dissenting opinion.

1 No. 49 SSM 4

The People &c.,
Respondent,
v.
George Brown,
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum.
Chief Judge DiFiore and Judges Stein and Garcia concur.
Judge Fahey concurs in result upon the ground that defendant's arguments are unpreserved.
Judge Wilson dissents in an opinion, in which Judge Rivera concurs.

No. 38

The People &c.,
Respondent,
v.
Cesar Garcia,
Appellant.

Reargument ordered for a future Court session.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

1 No. 32
U.S. Bank National Association, &c.,
 Respondent,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant.

Reargument ordered for a future Court session.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey
and Garcia concur.
Judge Wilson took no part.

 No. 27
The People &c.,
 Respondent,
 v.
Kenneth Slade,
 Appellant.

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

4 No. 35
The People &c.,
 Respondent,
 v.
William A. Wilkins, &c.,
 Appellant.

Reargument ordered for a future Court session.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,
Garcia and Wilson concur.

MOTIONS

1 Mo. No. 2021-176
A&F Hamilton Heights Cluster, Inc., et al.,
 Plaintiffs,
James Fendt,
 Appellant,
 v.
Urban Green Management Inc., et al.,
 Defendants.

WHGA Hamilton Heights Cluster, Inc., et al.,
 Intervenors-Respondents,
 v.
Hamilton Heights Cluster Associates, L.P., et
al.,
 Intervenors-Defendants,
A&F HHC Equities, LLC,
 Intervenor-Appellant.
Safeguard Realty Management, Inc., et al.,
 Nonparty Respondents.
(And a Third-Party Action.)

Motion for leave to appeal denied.

2 Mo. No. 2021-359
Susan Aranoff,
 Respondent,
 v.
Gerald Aranoff,
 Appellant.

Motion for reargument of motion for leave to appeal
denied.

1 Mo. No. 2021-215
The People &c.,
 Respondent,
 v.
Michael Bean,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-121
The People &c.,
 Respondent,
 v.
Derrick Brown,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2021-142
In the Matter of John J. Darwak et al.,
 Appellants,
 v.
City of New York, et al.,
 Respondents,
et al.,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2021-144
Michael R. Desroches,
 Respondent,
 v.
Heritage Builders Group, LLC, et al.,
 Appellants.

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 Mo. No. 2021-209
In the Matter of Warren Diamond,
 Appellant,
 v.
Scott Diamond,
 Respondent,
Nacirema Management Associates, LLC, et
al.,
 Respondents.

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

1 Mo. No. 2021-181
In the Matter of Raymond Dieffenbacher,
 Appellant,
 v.
Melissa Jackson, &c., et al.,
 Respondents.

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

2 Mo. No. 2021-148
The People &c.,
Respondent,
v.
Rory Dolan,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2020-676
In the Matter of Steven R. Donziger, &c.

Attorney Grievance Committee for the First
Judicial Department,
Respondent;
Steven R. Donziger,
Appellant.

Motion for leave to appeal denied.
Chief Judge DiFiore and Judges Rivera, Stein,
Garcia and Wilson concur.
Judge Fahey dissents.

1 Mo. No. 2021-168
The People &c.,
Respondent,
v.
Scott E.,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-206
In the Matter of Express Scripts, Inc.,
Appellant,
v.
Metropolitan Transit Authority, et al.,
Respondents.

Motion for leave to appeal denied.

Mo. No. 2021-369
Jesus Ferreira,
Appellant,
v.
City of Binghamton et al.,
Respondents.

Motion by New York State Academy of Trial
Lawyers for leave to file a brief amicus curiae on
consideration of the certified question herein granted
and the proposed brief is accepted as filed. Two
copies of the brief must be served, nine copies filed,
and the brief submitted in digital format within seven
days.

2 Mo. No. 2021-124
The People &c.,
Respondent,
v.
Anastelio Garcia,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-164
In the Matter of Michael Garvey,
Appellant,
v.
Town of Clarkstown, et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-135
In the Matter of Lisa Gerbino, et al.,
Appellants,
v.
John Whalen, &c., et al.,
Respondents.

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

3 Mo. No. 2021-128
In the Matter of William H. Hoffay, et al.,
Appellants,
v.
Town of Sand Lake, et al.,
Respondents.

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

1 Mo. No. 2021-126
Sheldon Lamar Hunt,
Appellant,
v.
New York City Department of Education,
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.

2 Mo. No. 2021-137
Georgiy Koyko, &c.,
Appellant,
v.
City of New York, et al.,
Respondents.

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 with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2021-203
In the Matter of Warren McDowell,
Appellant,
v.
Blue Point Fire Department,
Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution. Motion to expand the record dismissed as academic.

1 Mo. No. 2021-115
The People &c.,
Respondent,
v.
Jose Medina,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-250
Metropolitan Lofts of NY, LLC,
Appellant,
v.
Metroeb Realty 1, LLC,
Defendant,
RedSky Capital, LLC,
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.

2 Mo. No. 2021-147
In the Matter of Jill S. Meyer, &c.,
Appellant,
v.
Helen Diane Foster, et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-141
County of Nassau, et al.,
 Appellants,
Chautauqua County, et al.,
 Intervenors-Appellants,
 v.
Expedia, Inc., et al.,
 Respondents.

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

4 Mo. No. 2021-184
In the Matter of the Arbitration Between New
York Schools Insurance Reciprocal,
 Appellant;
Deborah Kalbfliesh,
 Respondent.

Motion for leave to appeal dismissed as untimely (*see* CPLR 5513 [b]; 2103 [b] [2]).

2 Mo. No. 2021-112
The People &c.,
 Respondent,
 v.
Yuleiny Pena-James,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-162
Penthouse Global Media, Inc.,
 Appellant,
 v.
The Executive Club LLC,
 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.

3 Mo. No. 2021-190
Elizabeth Prendergast,
 Respondent,
 v.
Maria Swiencicky,
 Appellant,
et al.,
 Defendant.

Motion for reargument of motion denied.
Motion for other relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).

1 Mo. No. 2021-130
Alroy Richards,
 Appellant,
 v.
Security Resources,
 Respondent,
et al.,
 Defendant.

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

3 Mo. No. 2021-27
In the Matter of Rifenburg Construction, Inc.,
 Appellant,
 v.
Town of Sand Lake et al.,
 Respondents.

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

3 Mo. No. 2021-84
In the Matter of Rifenburg Construction, Inc.,
 Appellant,
 v.
Town of Sand Lake et al.,
 Respondents.

Motion by New York Construction Materials Association, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted and the affidavit is accepted as filed.

1 Mo. No. 2021-166
The People &c.,
 Respondent,
 v.
Warren Singleton,
 Appellant.

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

2 Mo. No. 2021-101
The People &c.,
 Respondent,
 v.
Jason Smith,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-154
Ann Tarzia, &c., et al.,
 Appellants,
 v.
Brookhaven National Laboratory, et al.,
 Respondents.

Motion for leave to appeal 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.

3 Mo. No. 2021-30
In the Matter of Troy Sand & Gravel Co., Inc.
et al.,
 Appellants,
 v.
Town of Sand Lake et al.,
 Respondents.

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

2 Mo. No. 2021-180
The People &c.,
 Respondent,
 v.
Pedro Vega,
 Appellant.

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

2 Mo. No. 2021-132
The People &c.,
 Respondent,
 v.
Richard West,
 Appellant.

Motion for leave to appeal denied.