

State of New York
Court of Appeals

Decisions

February 14, 2023

CASES

2 No. 4
Bank of America, N.A.,
 Appellant,
 v.
Andrew Kessler,
 Respondent,
et al.,
 Defendants.

Order insofar as appealed from reversed, with costs, defendant Andrew Kessler's motion for summary judgment dismissing the complaint as against him denied, plaintiff's motion for summary judgment granted in accordance with the opinion herein, case remitted to Supreme Court, Westchester County, for further proceedings, and certified question answered in the negative.
Opinion by Judge Wilson.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Singas and Troutman concur.

4 No. 3
Krystallo Hetelekides, &c.,
 Appellant,
 v.
County of Ontario et al.,
 Respondents.

Order affirmed, with costs.
Opinion by Judge Rivera.
Acting Chief Judge Cannataro and Judges Garcia, Wilson, Singas and Troutman concur.

3 No. 5
In the Matter of State of New York,
 Appellant,
 v.
New York State Public Employment
Relations Board, et al.,
 Respondents.

Order reversed, with costs, and petition to annul the determinations of the New York State Public Employment Relations Board granted.
Opinion by Judge Singas.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson and Troutman concur.

3 No. 30 SSM 20
The People &c.,
 Respondent,
 v.
Storm N. Rivera,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed. On this record, defendant has not met his burden of showing that trial counsel's performance was constitutionally deficient and his claims regarding counsel's tactical decisions are based on matters dehors the record (*see People v Hymes*, 34 NY3d 1178, 1179 [2020]). Defendant's other arguments pertaining to County Court's inquiry of juror No. 6 are unpreserved (*see People v Bailey*, 32 NY3d 70, 77-79 [2018]). Defendant's remaining contentions do not require reversal. Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

3 No. 2
State of New York,
 Appellant,
 v.
Vayu, Inc.,
 Respondent.

Order reversed, with costs, and defendant Vayu, Inc.'s CPLR 3211 (a) (8) motion to dismiss the complaint denied.
Opinion by Judge Garcia.
Acting Chief Judge Cannataro and Judges Wilson, Singas and Troutman concur.
Judge Rivera dissents and votes to affirm in an opinion.

MOTIONS

1 Mo. No. 2022-846
In the Matter of 160 East 84th Street,
Appellant,

v.

New York State Division of Housing and
Community Renewal,
Respondent,
Sherry Sado,
Respondent.

Motion for reargument of motion for leave to appeal
denied.

1 Mo. No. 2022-864
The People &c.,
Respondent,

v.

Jean Aboa-Ahika,
Appellant.

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

1 Mo. No. 2022-831
In the Matter of Edwin Agramonte, et al.,
Appellants,

v.

Local 461, District Council 37, American
Federation of State, County and Municipal
Employees, &c.,
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2022-841
In the Matter of Anonymous, &c.

Patrick B.,
Appellant.
(App. Div. No. 2022-07242)

Motion for leave to appeal denied.

2 Mo. No. 2023-38
Susan Aranoff,
 Respondent,
 v.
Gerald Aranoff,
 Appellant.

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

1 Mo. No. 2022-778
The People &c.,
 Respondent,
 v.
Jonathan Armstrong,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-784
In the Matter of Kathryn Arntzen et al.,
 Appellants,
Steven Thaler et al.,
 Appellants,
 v.
City of New York,
 Respondent.

Motions for leave to appeal denied.

1 Mo. No. 2022-847
BGC Partners, Inc. et al.,
 Appellants,
 v.
Avison Young (Canada), Inc., et al.,
 Respondents.

Motion for reargument of motion for leave to appeal denied.

 Mo. No. 2022-844
Livingstone Broomes,
 Appellant,
 v.
Legal Aid Society of New York City, Inc., 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. 2022-849
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2020-09406)

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. 2022-850
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2021-01417)

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. 2022-851
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2021-04425)

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. 2022-852
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2021-08970)

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. 2022-858
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2019-09305)

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

2 Mo. No. 2022-859
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2020-02288)

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

2 Mo. No. 2022-860
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2020-09166)

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

2 Mo. No. 2022-866
Gregory Christopulos,
 Respondent,
 v.
Katherine Christopulos, &c., et al.,
 Defendants,
Nicholas Spyreas,
 Appellant.
(App. Div. No. 2021-06093)

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

2 Mo. No. 2022-867
Gregory Christopulos,
Respondent,
v.
Katherine Christopulos, &c., et al.,
Defendants,
Nicholas Spyreas,
Appellant.
(App. Div. No. 2020-09406)

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

2 Mo. No. 2022-868
Gregory Christopulos,
Respondent,
v.
Katherine Christopulos, &c., et al.,
Defendants,
Nicholas Spyreas,
Appellant.
(App. Div. No. 2021-01417)

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

2 Mo. No. 2022-869
Gregory Christopulos,
Respondent,
v.
Katherine Christopulos, &c., et al.,
Defendants,
Nicholas Spyreas,
Appellant.
(App. Div. No. 2021-08970)

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

1 Mo. No. 2022-825
In the Matter of Department of Education of
the City of New York ("DOE") et al.,
Respondents,
v.
Michael Canick,
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.

2 Mo. No. 2023-4
Federal National Mortgage Association, &c.,
Appellant,
v.
Maxi Jeanty, &c. et al.,
Respondents,
et al.,
Defendants.

Motion for reargument or renewal denied with one hundred dollars costs and necessary reproduction disbursements.

1 Mo. No. 2022-855
Jason Flynn, &c.,
Respondent,
v.
Red Apple 670 Pacific Street,
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 Mo. No. 2022-829
The People &c.,
Respondent,
v.
Vinerio Franceschini,
Appellant.

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

1 Mo. No. 2022-826
The People &c.,
Respondent,
v.
Hermes Gonzalez,
Appellant.

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

1 Mo. No. 2022-820
The People &c.,
Respondent,
v.
Wilfredo Gonzalez,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-808
In the Matter of John Hogan,
Appellant,
v.
James Thompson, &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.

2 Mo. No. 2022-834
The People &c.,
Respondent,
v.
Gyasi Jackson,
Appellant.
(App. Div. No. 2021-04835)

Motion for leave to appeal denied.

2 Mo. No. 2022-835
The People &c.,
Respondent,
v.
Gyasi Jackson,
Appellant.
(App. Div. No. 2021-05058)

Motion for leave to appeal denied.

4 Mo. No. 2023-29
William D. Maldovan, &c.,
Appellant,
v.
County of Erie et al.,
Respondents.

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.
Judge Rivera took no part.

2 Mo. No. 2023-40

Nella Manko,
Appellant,
v.
David A. Gabay, &c., et al.,
Respondents,
et al.,
Defendants.
(App. Div. No. 2016-13181)

Nella Manko,
Appellant,
v.
David A. Gabay, &c., et al.,
Respondents.
(App. Div. No. 2017-07541)

2 Mo. No. 2022-739

In the Matter of Neil Marcus,
Respondent,
v.
Planning Board of the Village of Wesley
Hills, et al.,
Appellants.

2 Mo. No. 2022-899

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

4 Mo. No. 2022-767

National Air Cargo, Inc., et al.,
Appellants,
et al.,
Plaintiffs,
v.
Jenner & Block, LLP et al.,
Respondents.

Motion for reargument of motion for leave to appeal denied.

Motion for poor person relief dismissed as academic. Acting Chief Judge Cannataro took no part.

Motion for leave to appeal denied.

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

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 Rivera took no part.

1 Mo. No. 2022-822
The People &c.,
 Respondent,
 v.
Garis Ortega,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-845
The People &c.,
 Respondent,
 v.
Andrew Ortner,
 Appellant.

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

3 Mo. No. 2022-815
The People &c.,
 Respondent,
 v.
Timothy Pulsifer,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-814
The People &c.,
 Respondent,
 v.
Philip Rhinehart,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-740
The People &c.,
 Respondent,
 v.
Jerome Richardson,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-832
The People &c.,
Respondent,
v.
James Ross,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-824
John W. Saunders,
Respondent,
v.
Sandra Foschi, 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.

2 Mo. No. 2022-742
The People &c.,
Respondent,
v.
Issa Sesay,
Appellant.

Motion for leave to appeal denied.
Judge Singas took no part.

2 Mo. No. 2022-653
In the Matter of Phee Simpson,
Respondent,
v.
Poughkeepsie Central School District et al.,
Appellants.

Motion for leave to appeal denied.

1 Mo. No. 2022-888
Taxi Tours Inc.,
Plaintiff,
v.
Go New York Tours, Inc.,
Appellant.

Go New York Tours, Inc.,
Appellant,
v.
Big Bus Tours Limited, et al.,
Respondents.

Motion, insofar as it seeks leave to appeal as against respondents Go City, Inc.; Go City North America, LLC; Open Top Sightseeing USA, Inc.; and Taxi Tours Inc., dismissed upon the ground that as to those respondents the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise granted.

2 Mo. No. 2022-908
The People &c.,
Respondent,
v.
Warren Taylor,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-903
The People &c.,
Respondent,
v.
Jose Tzintzun-Frias,
Appellant.

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

4 SSD 5
Thomas C. Wilmot, Sr., et al.,
Respondents,
v.
Tony Kirik,
Appellant,
County of Monroe,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

2 Mo. No. 2022-876
Albertha Wray-Davis,
Appellant,
v.
New York Methodist Hospital,
Respondent.

Motion for reargument of motion for leave to appeal dismissed as untimely (*see* Rules of Ct of Appeals [22 NYCRR] § 500.24 [b]).