

December 15, 2011

CASES

1 No. 232

Edward Beazer,
Respondent,

v.

New York City Health and Hospitals
Corporation, et al.,
Defendants,
Beys Contracting, Inc.,
Appellant.

Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

3 No. 235

The People &c.,
Respondent,

v.

Robert Guy Dickinson,
Appellant.

Order reversed and indictment dismissed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

4 No. 234

The People &c.,
Respondent,

v.

Scott C. Furey,
Appellant.

Order reversed and a new trial ordered. Opinion by Judge Graffeo. Chief Judge Lippman and Judges Ciparick, Read, Smith, Pigott and Jones concur.

1 No. 222

Metropolitan Taxicab Board of Trade, et al.,
Appellants,

v.

The New York City Taxi & Limousine
Commission ("TLC"),
et al.,
Respondents.

Order, insofar as appealed from, reversed, with costs, and New York City Taxi & Limousine Commission Rule 1-78 (a) (4) annulled to the extent that it forbids owners of taxicabs from collecting sales tax in addition to Standard Lease Caps. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

3 No. 189
In the Matter of New York State Superfund
Coalition, Inc.,
 Appellant,
 v.
New York State Department of
Environmental Conservation,
et al.,
 Respondents.

4 No. 233
The People &c.,
 Respondent,
 v.
Wayne R. Stewart,
 Appellant.

Order affirmed, with costs.
Opinion by Judge Jones.
Chief Judge Lippman and Judges Ciparick, Graffeo
and Read concur.
Judge Pigott dissents and votes to reverse in an
opinion in which Judge Smith concurs.

Order modified by reducing defendant's conviction of
assault in the first degree to assault in the second
degree and remitting to Herkimer County Court for
resentencing, and as so modified, affirmed, in a
memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo,
Read, Smith, Pigott and Jones concur.

MOTIONS

1 Mo. No. 2011-1115
177 Christie, Inc., &c., et al.,
 Appellants,
 v.
Environmental Control Board of the City of
New York, et al.,
 Respondents.

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

4 Mo. No. 2011-1132
In the Matter of Avis M. Beck,
 Respondent,
 v.
Robert Leonard Butler,
 Appellant.

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

2 SSD 56
Danielle Biton, et al.,
 Appellants,
 v.
Ameena Meer, et al.,
 Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that it does not lie (see CPLR 5601).

4 Mo. No. 2011-1116
In the Matter of Derek R. Brownlee, Esq.,
&c.,
 Respondent,
 v.
Carl A. Gutzmer,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2011-1156
In the Matter of Buffalo Professional
Firefighters Association, Inc., IAFF Local
282,
 Respondent,
 v.
City of Buffalo,
 Appellant.

Motion for reargument of motion for leave to appeal denied. An order directing further arbitration proceedings, whether before the same or a different arbitrator, is not one finally determining a proceeding within the meaning of the Constitution (Matter of SOMA Partners v Northwest Biotherapeutics, Inc., lv dismissed 9 NY3d 942 [2007]; Matter of Beard v Town of Newburgh, lv dismissed 93 NY2d 958 [1999]; Matter of Sachem Cent. Teachers Assn. v Board of Educ. of Sachem Cent. School Dist., lv dismissed 88 NY2d 1064 [1996]). Older cases to the contrary (e.g. Matter of Baar & Beards, Inc. [Oleg Cassini, Inc.], 30 NY2d 649 [1972]) are no longer good law.

3 Mo. No. 2011-1102
In the Matter of Marcita G. Childs,
 Appellant,
Kaleida Health,
 Respondent.
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.

 Mo. No. 2011-1110
The People &c. ex rel. Junior Collins,
 Appellant,
 v.
J. F. Billnier, &c.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2011-1131
The People &c.,
 Respondent,
 v.
Lavon Dean,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2011-1135
In the Matter of Fieldbridge Associates, LLC,
Appellant,
v.
New York State Division of Housing and
Community Renewal,
Respondent.

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

2 Mo. No. 2011-1126
Frank Fusca,
Respondent,
v.
A & S Construction, LLC,
Appellant.
(And a Third-Party Action.)

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. 2011-1105
Galasso, Langione & Botter, LLP, et al.,
Respondents,
v.
Thomas F. Liotti,
Appellant.

Thomas F. Liotti,
Third-Party Appellant,
v.
Frederick K. Brewington,
Third-Party Respondent.

Motion for reargument of motion for leave to appeal denied.
Motion for a stay dismissed as academic.

4 Mo. No. 2011-1118
In the Matter of Adam G. et al.

Onondaga County Department of Social
Services,
Respondent;
Robert G., III,
Appellant.

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

4 Mo. No. 2011-1122
Steven M. Garber & Associates, &c.,
Respondent,
v.
Kim John Zuber,
Appellant,
et al.,
Defendant.

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

3 Mo. No. 2011-1101
The People &c. ex rel. Santo Gonzalez,
Appellant,
v.
New York State Department of Correctional
Services, et al.,
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2011-1112
In the Matter of Shawn G. Granger,
Appellant,
v.
Danielle D. Misercola,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2011-1096
Aleksey Guryev,
Appellant,
v.
Gregory Tomchinsky, et al.,
Defendants,
200 Riverside Boulevard at Trump Place, et
al.,
Respondents.

Motion for leave to appeal granted.

4 Mo. No. 2011-1133
The People &c. ex rel. Kalvin Harmon,
Appellant,
v.
Harold D. Graham, &c.,
Respondent.

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

2 Mo. No. 2011-1137
In the Matter of Zechariah J. (Anonymous).

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

Orange County Department of Social
Services,
Respondent;
Valrick J. (Anonymous),
Appellant.

1 Mo. No. 2011-1092
William I. Koch,
Appellant,
v.
Acker, Merrall & Condit Company,
Respondent.

Motion for leave to appeal granted.
Judge Smith took no part.

4 Mo. No. 2011-1124
The People &c. ex rel. James Lynch,
Appellant,
v.
Michael P. Corcoran, &c.,
Respondent.

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

2 Mo. No. 2011-1143
In the Matter of Rickey Lynch,
Appellant,
v.
William Condon, &c.,
Respondent.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the issues
presented have become moot.
Motion for leave to appeal dismissed upon the
ground that the issues presented have become moot.

2 Mo. No. 2011-1129
In the Matter of Jill S. Meyer, &c.,
Appellant,
v.
Michael F. Hogan, &c., et al.,
Respondents.

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

2 Mo. No. 2011-1119
Javondi Pender,
Appellant,
v.
Lasalle Bus Service, Inc.,
Respondent.

Motion for leave to appeal dismissed upon the ground that the Court of Appeals does not have jurisdiction to entertain this motion for leave to appeal from the order of the Appellate Division entered in this proceeding commenced in the Civil Court of the City of New York (NY Const, art VI, § 3[b][7]; CPLR 5602[a]).
Motion for poor person relief dismissed as academic.

1 Mo. No. 2011-1128
Randi Rhodes, &c.,
Appellant,
v.
Steven Edward Herz, 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.

4 Mo. No. 2011-1123
John Viscosi et al.,
Appellants,
v.
Preferred Mutual Insurance Company,
Respondent.

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

4 Mo. No. 2011-1136
In the Matter of Sean W., &c.

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

Onondaga County Department of Social
Services,
 Respondent;
Brittany W.,
 Appellant,
et al.,
 Respondent.
Vincent M. et al.,
 Intervenors-Respondents.