

State of New York
Court of Appeals

Decisions

February 9, 2023

CASES

4 No. 6
The People &c.,
 Respondent,
 v.
Michael Myers,
 Appellant.

Order reversed, defendant's motion to preclude pursuant to CPL 700.70 granted and a new trial ordered.
Opinion by Judge Garcia.
Acting Chief Judge Cannataro and Judges Rivera, Wilson, Singas and Troutman concur.

1 No. 9
The People &c.,
 Respondent,
 v.
Oscar Sanders,
 Appellant.

Order reversed and a new trial ordered.
Opinion by Judge Rivera.
Acting Chief Judge Cannataro and Judges Garcia, Wilson, Singas and Troutman concur.

3 No. 1
In the Matter of Town of Southampton et al.,
 Respondents,
et al.,
 Petitioner,
 v.
New York State Department of
Environmental Conservation et al.,
 Respondents,
Sand Land Corporation et al.,
 Appellants.

Order insofar as appealed from modified, without costs, by remitting to Supreme Court, Albany County, with directions to remand to New York State Department of Environmental Conservation for further proceedings in accordance with the opinion herein and, as so modified, affirmed.
Opinion by Acting Chief Judge Cannataro.
Judges Garcia, Wilson, Singas and Troutman concur.
Judge Rivera took no part.

 No. 31
Nafeesa Syeed,
 Appellant,
 v.
Bloomberg L.P.,
 Respondent.

Certification of question by the United States Court of Appeals for the Second Circuit, pursuant to section 500.27 of this Court's Rules of Practice, accepted and the issues presented are to be considered after briefing and argument.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

1 No. 29 SSM 19
Min Zhong,
 Appellant,
 v.
Peter J. Matranga,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. In response to defendant's prima facie showing of entitlement to summary judgment, plaintiff failed to raise a triable issue of material fact (*see Heltz v Barratt*, 24 NY3d 1185, 1187 [2014]; *Green v Mower*, 100 NY2d 529, 530 [2003]).

Acting Chief Judge Cannataro and Judges Garcia, Wilson, Singas and Troutman concur.

Judge Rivera dissents and votes to reverse and deny defendant's motion for summary judgment, for reasons stated in so much of the dissenting opinion by Justice Peter H. Moulton as concluded that, assuming defendant made out a prima facie case in support of his motion for summary judgment, plaintiff raised triable issues of material fact warranting denial of the motion (*see Min Zhong v Matranga*, 208 AD3d 439, 444-445 [Moulton, J. dissenting]).

MOTIONS

1 Mo. No. 2022-687
274 Madison Company, LLC,
 Appellant,
 v.
Cristhiane Vieira,
 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.

4 Mo. No. 2022-783
AH Wines, Inc., et al.,
 Appellants,
 v.
C6 Capital Funding LLC,
 Respondent.

Motion for leave to appeal granted.

4 Mo. No. 2022-821
American Tax Funding, LLC,
 Respondent,
 v.
James I. Wynn, Sr.,
 Appellant,
County of Monroe,
 Respondent,
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 Mo. No. 2022-828
AmTrust North America, Inc.,
 Appellant,
 v.
Sherri Pavloff 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. 2022-809
The People &c. ex rel. Abdool Azeez,
Appellant,
v.
Superintendent, Lynne Lilly, Eastern
Correctional Facility,
Respondent.

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.
Motion for poor person relief dismissed as academic.
Motion for a stay dismissed as academic.
Judge Troutman took no part.

1 Mo. No. 2022-790
The Bank of New York Mellon, &c.,
Respondent,
v.
Adam Pl0tch LLC,
Appellant,
et al.,
Defendants.

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

1 Mo. No. 2023-60
The People &c.,
Respondent,
v.
Anthony Blue,
Appellant.

Motion for assignment of counsel granted and
Caprice R. Jenerson, Esq., Office of the Appellate
Defender, 11 Park Place, Suite 1601, New York, NY
10007 assigned as counsel to the appellant on the
appeal herein.

2 Mo. No. 2023-8
The People &c.,
Respondent,
v.
Jason Bohn,
Appellant.

Motion for assignment of counsel granted and
Patricia Pazner, Esq., Appellate Advocates, 111 John
Street, 9th Floor, New York, NY 10038 assigned as
counsel to the appellant on the appeal herein.

1 Mo. No. 2022-911
In the Matter of Roger C.,
Appellant,
v.
Heidi A.,
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. 2023-84
Kathryn Casey, et al.,
Respondents,
Pamela Renna et al.,
Plaintiffs-Intervenors,
v.
Whitehouse Estates, Inc., et al.,
Appellants.

Whitehouse Estates, Inc., et al.,
Third-Party Appellants,
v.
Roberta L. Koepfel, et al.,
Third-Party Defendants.

4 Mo. No. 2022-833
Cheswold (TL), LLC,
Respondent,
v.
James Wynn,
Appellant,
County of Monroe, et al.,
Respondents.

2 Mo. No. 2023-100
The People &c.,
Respondent,
v.
Matthew Corr,
Appellant.

1 Mo. No. 2022-730
William S. Culman,
Respondent,
v.
Marianne Boesky,
Appellant.

Motion by Housing Rights Initiative, Inc. 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

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 poor person relief granted.

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

1 Mo. No. 2023-87
The People &c.,
Respondent,
v.
Jean Dufresne,
Appellant.

Motion for poor person relief granted.

3 Mo. No. 2022-781
The People &c. ex rel. Michael Erber,
Appellant,
v.
Superintendent John Rich,
Respondent.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2022-792
The People &c.,
Respondent,
v.
J.F.,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-755
In the Matter of Jeremy Fulton,
Appellant,
v.
Charles H. Solomon, &c.,
Respondent.

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

1 Mo. No. 2023-22
The People &c.,
Respondent,
v.
George Garcia,
Appellant.

Motion for assignment of counsel granted and Mark Zeno, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2022-774
In the Matter of Marc Lawrence Habif,
Appellant,
v.
New York State Workers' Compensation
Board,
Respondent.

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

1 Mo. No. 2022-791
Harlem Contracting LLC,
Respondent,
v.
2201 7th Avenue Realty LLC et al.,
Defendants.
Trevor Whittingham et al.,
Nonparty-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. 2022-804
The People &c.,
Respondent,
v.
John Heater,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-759
Rachel Herman, et al.,
Respondents,
v.
Judlau Contracting, Inc.,
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. 2022-873
Rachel Herman, et al.,
Respondents,
v.
Judlau Contracting, Inc.,
Appellant.

Motion by General Contractors Association of the City of New York, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

2 SSD 2
Faye T. Madigan, &c.,
Plaintiff,

v.

Berkeley Capital LLC, et al.,
Defendants,
Rosa Bronstein, et al.,
Respondents,
Oceana Holding Corp.,
Respondent.
Joseph Paukman,
Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, as untimely (*see* CPLR 5513 [a]).

4 Mo. No. 2022-854
In the Matter of Jason N. Manioci,
Respondent,

v.

Rachel E. Schreiber,
Appellant.

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

2 Mo. No. 2022-752
In the Matter of Belchris Martinez,
Respondent,

v.

Patrick Driscoll,
Appellant.
(And Another Proceeding.)

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

2 Mo. No. 2023-101
The People &c.,
Respondent,

v.

Bryan McDonald,
Appellant.

Motion for poor person relief granted.

1 Mo. No. 2022-751
Neil McNaughton,
Appellant,
v.
5 West 14 Owners Corp., et al.,
Respondents,
et al.,
Defendants.

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

4 Mo. No. 2022-879
In the Matter of Mya N.

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

Audriana S.R.,
Appellant,
v.
Livingston County Department of Social
Services, et al.,
Respondents.

Tricia A.N.,
Respondent,
v.
Livingston County Department of Social
Services et al.,
Respondents,
Audriana S.R.,
Appellant.

1 Mo. No. 2023-78
The People &c.,
Respondent,
v.
Danny Novas,
Appellant.

Motion for assignment of counsel granted and Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2022-758
In the Matter of Nelson Obus et al.,
Respondents,
v.
New York State Tax Appeals Tribunal,
Respondent,
Commissioner of the Department of Taxation
and Finance of the State of New York,
Appellant.

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

3 SSD 1
In the Matter of the Claim of Lidia M.
Orrego,
Appellant,
v.
Kevin Knipfing, et al.,
Respondents.
Workers' Compensation Board,
Respondent.

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

2 Mo. No. 2022-819
In the Matter of Jolani P.
Westchester County Department of Social
Services,
Respondent;
Parris M.,
Appellant,
et al.,
Respondent.

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

1 Mo. No. 2022-827
Eita (Itty) Pruss et al.,
Appellants,
v.
AmTrust North America Inc., et al.,
Defendants,
Sherri N. Pavloff, et al.,
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2022-516
Frederick Reus et al.,
 Appellants,
 v.
ETC Housing Corporation et al.,
 Respondents,
et al.,
 Defendants.

Motion, insofar as it seeks leave to appeal from the portion of the March 2022 Appellate Division order affirming the Supreme Court order imposing sanctions upon plaintiffs' counsel, dismissed upon the ground that plaintiffs are not parties aggrieved (*see* CPLR 5511); motion for leave to appeal otherwise dismissed upon the ground that the remainder of the March 2022 Appellate Division order and the May 2022 Appellate Division order denying reargument or leave to appeal do not finally determine the action within the meaning of the Constitution.

4 Mo. No. 2023-99
In the Matter of Rochester Police Locust
Club, Inc., et al.,
 Respondents,
 v.
City of Rochester, et al.,
 Respondents,
Council of City of Rochester,
 Appellant.

Motion by City of Kingston for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.
Judge Troutman took no part.

2 Mo. No. 2022-801
The People &c.,
 Respondent,
 v.
Edwin Rolon,
 Appellant.

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

3 Mo. No. 2022-523
Roman Catholic Diocese of Albany, et al.,
 Appellants,
 v.
Maria T. Vullo, &c. et al.,
 Respondents,
et al.,
 Defendants.
(And Another Related Action.)

Motion for leave to appeal denied as unnecessary (*see* CPLR 5601 [b] [1]).

3 SSD 6
In the Matter of Stephen P. Romine,
 Appellant,
 v.
New York Public Service Commission et al.,
 Respondents.

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

1 Mo. No. 2022-682
Lauren S.,
 Respondent,
 v.
Alexander S.,
 Appellant.

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

2 Mo. No. 2022-756
In the Matter of Sid Jacobson Jewish
Community Center, Inc.,
 Appellant,
 v.
Zoning Board of Appeals of the Incorporated
Village of Brookville,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2023-119
Daler Singh, &c., et al.,
 Appellants,
 v.
City of New York, et al.,
 Respondents.

Motion by New York State Conference of Mayors and Municipal Officials for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Nine copies of the brief must be filed and the brief submitted in digital format within seven days. Judge Rivera took no part.

2 Mo. No. 2022-797
In the Matter of Harinder Jeet Singh,
 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.

1 Mo. No. 2023-111
In the Matter of Terrence Stevens et al.,
Respondents,
v.
New York State Division of Criminal Justice
Services, et al.,
Appellants.

Motion by Alexander F. Roehrkasse 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-798
Brian Bernard Tuohy,
Appellant,
v.
Kiyoe Sato,
Respondent.
(And Two Other Actions.)

Motion for reargument of motion for leave to appeal denied.

2 Mo. No. 2022-264
Marta Urias, &c. et al.,
Appellants,
v.
Daniel P. Buttafuoco & Associates, PLLC, et al.,
Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2022-729
Sandra Van De Walle, et al.,
Respondents,
v.
Naheed Asad Van De Walle, &c.,
Appellant.

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

1 Mo. No. 2022-799
The People &c.,
Respondent,
v.
Luis Vidro,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-779
The People &c.,
 Respondent,
 v.
Ronald E. Wright,
 Appellant.

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

4 Mo. No. 2022-813
Siyu Yang et al.,
 Appellants,
 v.
University of Rochester/Eastman School of
Music, et al.,
 Respondents.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the order
appealed from does not finally determine the action
within the meaning of the Constitution.
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 ancillary relief dismissed upon the
ground that this Court does not have jurisdiction to
entertain it (*see* NY Const, art VI, § 3).