

**State of New York**  
**Court of Appeals**

**Decisions**

April 26, 2022

**CASES**

3                    No. 59 SSM 5

The People &c.,  
    Respondent,  
    v.  
Malik Dawson,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Garcia, Singas, Cannataro and Troutman concur. Judge Wilson dissents in an opinion, in which Judge Rivera concurs.

2                    No. 2

The People &c.,  
    Respondent,  
    v.  
Levan Easley,  
    Appellant.

Order affirmed, in a memorandum. Chief Judge DiFiore and Judges Garcia, Singas and Cannataro concur. Judge Rivera dissents in an opinion, in which Judges Wilson and Troutman concur.

1                    No. 24

Francis Nemeth, &c.,  
    Respondent,  
    v.  
Brenntag North America, &c., et al.,  
    Defendants,  
Whittaker, Clark & Daniels, Inc.,  
    Appellant.

Order reversed, with costs, and complaint as against defendant Whittaker, Clark & Daniels, Inc. dismissed. Opinion by Judge Garcia. Chief Judge DiFiore and Judges Singas, Cannataro and Troutman concur. Judge Rivera dissents in an opinion. Judge Wilson took no part.

3                    No. 3

The People &c.,  
    Respondent,  
    v.  
John Wakefield,  
    Appellant.

Order affirmed. Opinion by Chief Judge DiFiore. Judges Garcia, Singas and Cannataro concur. Judge Rivera concurs in result in an opinion, in which Judges Wilson and Troutman concur.

## MOTIONS

1                    Mo. No. 2022-247  
4A General Contracting Corp. et al.,  
          Appellants,  
          v.  
Letitia James, &c. et al.,  
          Respondents,  
et al.,  
          Defendant.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Motion for a stay dismissed as academic.

1                    Mo. No. 2021-860  
80P2L LLC,  
          Appellant,  
          v.  
U.S. Bank Trust, N.A., &c.,  
          Respondent.

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

2                    Mo. No. 2021-972  
Pir Wajid Ali,  
          Appellant,  
          v.  
Shafquat Chaudhry,  
          Respondent.  
(And Another Action.)

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

1                    Mo. No. 2022-25  
The People of the State of New York, by  
Letitia James, &c.,  
          Respondent,  
          v.  
Laurence G. Allen et al.,  
          Appellants,  
NYPPEX, LLC, et al.,  
          Appellants.

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 orders sought to be appealed from do not finally determine the action within the meaning of the Constitution.

1 Mo. No. 2022-158  
The People of the State of New York, by  
Letitia James, &c.,  
Respondent,  
v.  
Laurence G. Allen et al.,  
Appellants,  
NYPPEX, LLC, et al.,  
Appellants.

Motion by Royal Asset Capital Group for leave to appear amicus curiae on the appeal and motion for leave to appeal herein granted and the brief is accepted as filed.

1 Mo. No. 2022-165  
The People of the State of New York, by  
Letitia James, &c.,  
Respondent,  
v.  
Laurence G. Allen et al.,  
Appellants,  
NYPPEX, LLC, et al.,  
Appellants.

Motion by Geeta Tewari for leave to appear amicus curiae on the appeal and motion for leave to appeal herein granted and the brief is accepted as filed.

2 Mo. No. 2022-19  
The People &c.,  
Respondent,  
v.  
Lamont Barrott,  
Appellant.

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

2 Mo. No. 2021-908  
Bruce R. Bent,  
Appellant,  
v.  
St. John's University, New York,  
Respondent.

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

3 Mo. No. 2021-1016  
In the Matter of Ronell Bond, &c.,  
Appellant,  
v.  
Anthony J. Annucci, &c., et al.,  
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2021-1031  
In the Matter of the Claim of Jeffrey Cisnero,  
Respondent,  
v.  
Independent Livery Driver Benefit Fund et  
al.,  
Appellants,  
New York Black Car Operators' Injury  
Compensation Fund, Inc.,  
Respondent,  
et al.,  
Respondent.  
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. 2022-15  
In the Matter of David Coleman,  
Appellant,  
v.  
Anthony J. Annucci, &c.,  
Respondent.

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

3 Mo. No. 2022-9  
In the Matter of the Foreclosure of Tax Liens  
by County of Essex.  
County of Essex,  
Respondent;  
Golden Ring International, Inc.,  
Appellant.

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

1 Mo. No. 2021-942  
In the Matter of Ryan Fields,  
Appellant,  
v.  
New York State Office of Children and  
Family Services et al.,  
Respondents.

Motion for leave to appeal denied.

4                    Mo. No. 2021-1026  
First Citizens Community Bank,  
Respondent,  
v.  
David L. Fleet et al.,  
Appellants.

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

4                    Mo. No. 2021-1034  
In the Matter of Elizabeth J. Fowler,  
Appellant,  
v.  
David L. Rothman,  
Respondent.

Motion for leave to appeal dismissed for failure to demonstrate timeliness as required by Rules of the Court of Appeals (*see* 22 NYCRR § 500.22 [b] [2]).

2                    Mo. No. 2022-2  
H & R Block Bank,  
Respondent,  
v.  
Randy Page, et al.,  
Defendants,  
Lance Feurtado, &c.,  
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. 2022-34  
In the Matter of Dave Brian Heffernan et al.,  
Appellants,  
v.  
New York City Mayor's Office of Housing  
Recovery Operations et al.,  
Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2021-973  
Raimonda Jarusauskaite,  
Appellant,  
v.  
Almod Diamonds, Ltd., et al.,  
Respondents,  
et al.,  
Defendants.

Motion for leave to appeal denied.

2 Mo. No. 2022-16  
JBGR, LLC, et al.,  
Respondents,  
Elliot WR Golf, LLC,  
Appellant,  
v.  
Chicago Title Insurance Company,  
Respondent.

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

2 Mo. No. 2022-46  
JBGR, LLC, et al.,  
Appellants,  
Elliot WR Golf, LLC,  
Respondent,  
v.  
Chicago Title Insurance Company,  
Respondent.

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

4 Mo. No. 2021-934  
Jessica Kammerer,  
Appellant,  
v.  
Luis Angel Mercado, et al.,  
Defendants,  
Auburn Buffalo Realty LLC,  
Respondent.

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

2 Mo. No. 2022-10  
Kerry Kennedy,  
Respondent,  
v.  
Marshall Hubsher,  
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.  
Judge Singas took no part.

2 Mo. No. 2022-11  
Jennifer Kirwan,  
Appellant,  
v.  
New York City Transit Authority, et al.,  
Respondents.

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

2 Mo. No. 2022-22  
Dennis Marney,  
Appellant,  
v.  
Cornell Kent II Holdings, LLC, et al.,  
Respondents,  
et al.,  
Defendants.

Motion for leave to appeal denied.

2 Mo. No. 2021-976  
The People &c.,  
Respondent,  
v.  
Chance McCurdy,  
Appellant.

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

1 Mo. No. 2021-991  
Michael McLaughlin et al.,  
Respondents,  
v.  
Arch Insurance Company,  
Defendant,  
Arch Specialty Insurance Company,  
Appellant.

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

4 Mo. No. 2022-70  
In the Matter of Alba M. Mercedes,  
Respondent,  
v.  
Carlos M. Sanchez,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-4  
The People &c.,  
Respondent,  
v.  
Kyron Mohansingh,  
Appellant.

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

4 Mo. No. 2021-927  
Paul Motondo, &c.,  
Respondent,  
v.  
City of Syracuse,  
Appellant.

Motion for leave to appeal granted.

Mo. No. 2022-5  
MUFG Union Bank, N.A., &c.,  
Respondent,  
v.  
Axos Bank, &c. et al.,  
Appellants,  
et al.,  
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.

1 Mo. No. 2021-1035  
Anthony Perez,  
Appellant,  
v.  
Garden Property Associates, LLC et al.,  
Respondents,  
et al.,  
Defendants.

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

2 Mo. No. 2021-1028  
James J. Rafferty,  
Respondent,  
v.  
Jennifer Rafferty,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-911  
In the Matter of Elizabeth Renner,  
Appellant,  
v.  
Office of Children and Family Services, et al.,  
Respondents.

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



3                    Mo. No. 2022-28  
In the Matter of the Claim of Alroy Richards,  
Appellant,  
v.  
Allied Universal Security, &c., et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2021-960  
In the Matter of Route 17K Real Estate, LLC,  
et al.,  
Appellants,  
v.  
Planning Board of the Town of Newburgh, et  
al.,  
Respondents.

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

2                    Mo. No. 2022-42  
The People &c.,  
Respondent,  
v.  
Craig Samuels,  
Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2022-45  
In the Matter of Save Monroe Ave., Inc.,  
Appellant,  
v.  
New York State Department of  
Transportation,  
Respondent.

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

3 Mo. No. 2022-49  
In the Matter of the Foreclosure of Tax Liens  
by City of Schenectady.

City of Schenectady,  
Respondent-Appellant;  
Kenrick Permaul et al.,  
Respondents,  
Wen Mei Lu-Whitney,  
Appellant-Respondent,  
et al.,  
Respondents.

4 Mo. No. 2021-1027  
In the Matter of Seneca Meadows, Inc.,  
Respondent,  
v.  
Town of Seneca Falls et al.,  
Appellants.  
Concerned Citizens of Seneca County, Inc. et  
al.,  
Intervenors-Appellants.

4 Mo. No. 2021-987  
In the Matter of Chad Sleiman,  
Appellant,  
v.  
New York State Central Register of Child  
Abuse and Maltreatment, et al.,  
Respondents.

On the Court's own motion, appeal, insofar as taken by the City of Schenectady against respondents Elizabeth Ayers, Gaston Hooks, Jr., Frank Popolizio, Jason Sacks, and Mark Sokol, dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution; appeal, insofar as taken by the City of Schenectady against respondents Kenrick Permaul, Tracey Sykes, and Andrew Wisoff, dismissed, without costs, upon the ground that, in an in rem tax foreclosure proceeding by a municipality, a dissent as to one parcel does not permit an appeal to this Court as of right by the municipality as to parcels separately owned as to which the Appellate Division unanimously resolved the proceeding (*see Matter of City of New York*, 304 NY 785, 786 [1952]; *see also Matter of Whitestone Bridge Approach, in Borough of Queens, City of N.Y.*, 293 NY 684, 685 [1944]).

Motion by Wen Mei Lu-Whitney for leave to appeal denied.

Motion for a stay by Wen Mei Lu-Whitney dismissed as academic.

Motions for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the hybrid action/proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602 (a) (2).

Judge Troutman took no part.

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

Judge Troutman took no part.

4 Mo. No. 2021-1001  
The People &c.,  
Respondent,  
v.  
Wesley A. Smith,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2021-947  
In the Matter of Bernard Sorrentino,  
Appellant,  
v.  
Anthony J. Annucci, &c.,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2022-18  
Strongbow Consulting Group LLC,  
Appellant,  
v.  
PricewaterhouseCoopers LLP,  
Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed so much of the Supreme Court order as granted the motion to compel arbitration, 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 action within the meaning of the Constitution.

4 Mo. No. 2021-928  
In the Matter of Arbitration between City of  
Syracuse,  
Appellant,  
Syracuse Police Benevolent Association, Inc.,  
Respondent.

Motion for leave to appeal granted.

4 Mo. No. 2021-874  
The People &c.,  
Respondent,  
v.  
Randy Taylor,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Troutman took no part.

2                    Mo. No. 2021-1029  
Balhar Thandi,  
Appellant,  
v.  
Otsego Mutual Fire Insurance Company,  
Respondent.

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

2                    Mo. No. 2021-993  
Wieslawa Tomaszynski,  
Appellant,  
v.  
New York City Transit Authority,  
Respondent,  
et al.,  
Defendant.

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

2                    Mo. No. 2022-21  
Verizon New York, Inc., &c.,  
Respondent,  
v.  
Supervisor of Town of Hempstead, et al.,  
Appellants.  
(And a Third-Party Action.)

Motion for leave to appeal from the November 2021 judgment dismissed upon the ground that it does not lie.

1                    Mo. No. 2022-7  
In the Matter of Wells Fargo Bank, et al.,  
Petitioners,  
v.  
Aegon USA Investment Management, LLC,  
et al.,  
Respondents,  
U.S. Bank National Association, &c.,  
Appellant,  
Tilden Park Investment Master Fund, &c.,  
Appellant,  
Nover Ventures LLC, et al.,  
Respondents.

Motions 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. 2022-23  
Kidist Wondemagegehu,  
    Respondent,  
    v.  
Orok Edem,  
    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.  
Motion for poor person relief &c. dismissed as academic.