

December 20, 2011

CASES

- 1                    No. 227  
Assured Guaranty (UK) Ltd., &c.,  
    Respondent,  
    v.  
J. P. Morgan Investment Management Inc.,  
    Appellant.
- Order affirmed, with costs, and certified question answered in the affirmative.  
Opinion by Judge Graffeo.  
Chief Judge Lippman and Judges Ciparick, Read, Pigott and Jones concur.  
Judge Smith took no part.
- 1                    No. 236  
The People &c.,  
    Respondent,  
    v.  
David Holland,  
    Appellant.
- Appeal dismissed, in a memorandum.  
Judges Graffeo, Read, Smith, Pigott and Jones concur.  
Chief Judge Lippman dissents in an opinion in which Judge Ciparick concurs.
- 2                    No. 226  
Luis F. Ortiz,  
    Appellant,  
    v.  
Varsity Holdings, LLC., et al.,  
    Respondents.
- Order modified, without costs, by denying defendants' motion for summary judgment as to plaintiff's Labor Law § 240(1) cause of action, and as so modified, affirmed and certified question not answered as unnecessary.  
Opinion by Judge Pigott.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur.
- 1                    No. 228  
Roni LLC, et al.,  
    Respondents,  
    v.  
Rachel L. Arfa, et al.,  
    Appellants,  
et al.,  
    Defendants.
- Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.  
Judge Smith took no part.

4                    No. 245 SSM 41  
The People &c.,  
    Respondent,  
    v.  
Frederick E. Walker,  
    Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order modified and case remitted to Supreme Court, Monroe County, for further proceedings, and as so modified, affirmed. We conclude that on this record defendant satisfied his burden of showing that a reconstruction hearing is necessary to determine whether he was present during the Sandoval hearing. Upon remittal, if it is determined that defendant was not present during the Sandoval hearing, a new trial must be ordered; if it is determined that defendant was present, the judgment of conviction should be amended to reflect that result. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur.  
Judge Pigott took no part.

2                    No. 225  
In the Matter of Robert Walsh,  
    Appellant,  
    v.  
Nicholas Scoppetta, &c., et al.,  
    Respondents.

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

## MOTIONS

2                    Mo. No. 2011-1172  
Air Stream Corp.,  
    Appellant,  
    v.  
3300 Lawson Corp.,  
    Respondent.

Motion for leave to appeal granted.

1                    Mo. No. 2011-1199  
Maninder Bhugra,  
    Appellant,  
    v.  
Massachusetts Casualty Insurance Company,  
et al.,  
    Respondents.

Motion for reconsideration of this Court's September 20, 2011 dismissal order denied.

4                    Mo. No. 2011-1163  
William E. Burkhart, Jr.,  
    Appellant,  
    v.  
Steven V. Modica, et al.,  
    Respondents.

Motion for leave to appeal &c. denied.

2                    Mo. No. 2011-1192  
In the Matter of Nestor Cacsire, et al.,  
    Respondents,  
    v.  
City of White Plains Zoning Board of  
Appeals,  
    Appellant.

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

4 Mo. No. 2011-1151  
In the Matter of Communication Workers of  
America, Local 1170,  
Respondent,  
v.  
Town of Greece,  
Appellant.

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In the Matter of Town of Greece,  
Appellant,  
v.  
CWA Local 1170 (Gold Badge Club), &c.,  
Respondent.

4 Mo. No. 2011-1165  
In the Matter of Alicia Dillard,  
Respondent,  
v.  
Derrick Hill,  
Appellant.  
Erie County Department of Social Services,  
Respondent.

2 Mo. No. 2011-1180  
Paul Eldridge, &c.,  
Respondent,  
v.  
Carmel Central School District Board of  
Education, et al.,  
Appellants.

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

Motion for leave to appeal denied.

Motion for leave to appeal, insofar as made by the Carmel Central School District Board of Education, dismissed upon the ground that the Board is not a party aggrieved (see CPLR 5511); motion for leave to appeal otherwise 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. 2011-1185  
Deborah Etzion,  
Respondent,  
v.  
Rafael Etzion,  
Appellant,  
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.

3 Mo. No. 2011-1167  
In the Matter of Vincent Gomez,  
Appellant,  
v.  
New York State Division of Parole,  
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2011-1166  
The People &c.,  
Respondent,  
v.  
Moses A. Good,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2011-1144  
J. D'Addario & Company, Inc.,  
Respondent,  
v.  
Embassy Industries, Inc.,  
Appellant.

Motion for leave to appeal granted.

2 Mo. No. 2011-1157  
JLG Architectural Products, LLC,  
Appellant,  
v.  
WDF, Inc.,  
Respondent,  
et al.,  
Defendants.  
(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.

3                    Mo. No. 2011-1154  
In the Matter of Johnathan Johnson,  
                          Appellant,  
                          v.  
Harry J. Corbitt, &c., et al.,  
                          Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2011-1200  
L&L Associates Holding Corp.,  
                          Respondent,  
                          v.  
Joseph A.F. Sadowski,  
                          Appellant,  
et al.,  
                          Defendants.

Motion for leave to appeal dismissed upon the  
ground that it does not lie (see CPLR 5602).  
Motion for a stay dismissed as academic.  
Motion for poor person relief dismissed as academic.

4                    Mo. No. 2011-1149  
In the Matter of Lastanza L.  
et al.  
  
Oneida County Department of Social  
Services,  
                          Respondent;  
Lakesha L.,  
                          Appellant.

Motion, insofar as it seeks leave to appeal from the  
Appellate Division order that affirmed Family  
Court's denial of the motion to vacate, dismissed  
upon the ground that such order does not finally  
determine the proceeding within the meaning of the  
Constitution; motion for leave to appeal otherwise  
denied.  
Motion for poor person relief dismissed as academic.

2                    SSD 57  
Nella Manko,  
                          Appellant,  
                          v,  
Lenox Hill Hospital,  
                          Respondent.

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

3                    Mo. No. 2011-1146  
In the Matter of Peter Monachelli,  
                          Appellant,  
                          v.  
Thomas P. DiNapoli, &c.,  
                          Respondent.

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

2                    Mo. No. 2011-1182  
The People &c.,  
                          Respondent,  
                          v.  
Anthony Mondo,  
                          Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2011-1158  
The People &c.,  
                          Respondent,  
                          v.  
Michael W. Myers,  
                          Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2011-1160  
In the Matter of Madison PP., &c.  
  
Clinton County Department of Social  
Services,  
                          Respondent;  
Tina QQ.,  
                          Appellant.  
(And Another Related Proceeding.)

Motion for leave to appeal denied.

3                    Mo. No. 2011-1159  
In the Matter of the Foreclosure of Tax Liens  
by County of Schuyler.

County of Schuyler,  
    Respondent;  
Edward Solomon Jr.,  
    Respondent;  
Solomon Financial Center, Inc.,  
    Appellant.  
Margaret E. Starbuck, &c. et al.,  
    Respondents.

Motion for reargument of motion for leave to appeal  
denied.

3                    Mo. No. 2011-1168  
In the Matter of Remus Smith,  
    Appellant,  
    v.  
Brian Fischer, &c.,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2011-1174  
In the Matter of Margaret Regan Smith, on  
behalf of Hunter I. (Anonymous),  
    Respondent;  
Dawn F.B. (Anonymous),  
    Appellant;  
Richard I. (Anonymous),  
    Nonparty-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. 2011-1162  
In the Matter of Surton Construction  
Contracting Corp.,  
    Appellant,  
    v.  
New York City School Construction  
Authority, et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2011-1161  
Yan Ping Xu,  
    Appellant,  
    v.  
City of New York, &c.,  
    Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed the denial of appellant's motion to amend the complaint, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied. Motion for poor person relief dismissed as academic.