

April 25, 2013

CASES

1                    No. 84  
The People &c.,  
    Respondent,  
    v.  
Marvin Byer,  
    Appellant.

Order affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.

                          No. 139  
John Doe,  
    Appellant,  
    v.  
Guthrie Clinic, Ltd., et al.,  
    Respondents.

Certification of a 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.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.

2                    No. 137 SSM 2  
The People &c.,  
    Respondent,  
    v.  
Daniel Floyd,  
    Appellant.

On review of submissions pursuant to section 500.11  
of the Rules, order reversed and a new trial ordered,  
in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.

                          No. 64  
In the Matter of the Honorable Bryan R.  
Hedges, a Judge of the Family Court,  
Onondaga County,  
    Petitioner.  
State Commission on Judicial Conduct,  
    Respondent.

Determined sanction accepted, without costs, and  
Bryan R. Hedges removed from the office of Judge  
of the Family Court, Onondaga County.  
Opinion Per Curiam.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.

1                    No. 73  
In the Matter of Deborah Sagal-Cotler,  
                  Appellant,  
          v.  
Board of Education of the City School District  
of The City of New York, et al.,  
                  Respondents.

Order reversed, with costs, the challenged  
determination annulled, and the matter remitted to  
Supreme Court, New York County, for further  
proceedings in accordance with the opinion herein.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Graffeo, Read,  
Pigott and Rivera concur.

1                    No. 76  
Teresa Sanchez,  
                  Appellant,  
          v.  
National Railroad Passenger Corp., &c.,  
                  Respondent,  
"ABC" Corp., &c.,  
                  Defendant.

Order reversed, with costs, and plaintiff's complaint  
reinstated, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Pigott and Rivera concur.  
Judge Smith dissents and votes to affirm in an  
opinion.

1                    No. 74  
In the Matter of Josephine Thomas,  
                  Appellant,  
          v.  
New York City Department of Education, et  
al.,  
                  Respondents.

Order reversed, with costs, the challenged  
determination annulled, and the matter remitted to  
Supreme Court, New York County, for further  
proceedings in accordance with the opinion herein.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Graffeo, Read,  
Pigott and Rivera concur.

1                    No. 71  
In the Matter of Dashawn W.,  
et al. &c.  
  
Administration for Children's Services,  
                  Respondent,  
Antoine N.,  
                  Appellant,  
et al.,  
                  Respondent.

Order affirmed, without costs.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges Graffeo, Smith,  
Pigott and Rivera concur.

## MOTIONS

4                    Mo. No. 2013-404  
The People &c.,  
    Respondent,  
    v.  
Jesse Abner,  
    Appellant.

Motion for poor person relief granted.

2                    Mo. No. 2013-192  
Air Stream Corp.,  
    Appellant,  
    v.  
3300 Lawson Corp.,  
    Respondent.

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

1                    Mo. No. 2013-380  
Tiffany Applewhite, &c., et al.,  
    Respondents,  
    v.  
Accuhealth, Inc., et al.,  
    Defendants,  
City of New York,  
    Appellant.

Motion by New York State Conference of Mayors and Municipal Officials for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

3                    Mo. No. 2013-369  
The People &c.,  
    Respondent,  
    v.  
Alfredo Ariosa,  
    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2 Mo. No. 2013-199  
Julian Arrendal,  
Plaintiff,  
v.  
Trizechahn Corporation et al.,  
Defendants.

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Trizechahn Corporation,  
Third-Party Appellant,  
v.  
Subway Real Estate Corp.,  
Third-Party Respondent.

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Subway Real Estate Corp.,  
Third-Party Respondent,  
v.  
Kashif D. Creary, et al.,  
Third-Party Respondents.

Mo. No. 2013-418  
Jeana Barenboim et al., &c.,  
Appellants,  
v.  
Starbucks Corporation,  
Respondent.

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Eugene Winans, et al., &c.,  
Appellants,  
Kennisha Lawrence,  
Plaintiff,  
v.  
Starbucks Corporation,  
Respondent.

2 SSD 18  
In the Matter of Joel R. Brandes, a disbarred  
attorney.

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 by New York State Restaurant Association, Inc. for leave to appear amicus curiae on consideration of the certified questions herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. Judiciary Law § 90(8) does not provide an independent predicate for an appeal as of right to this Court.

2 Mo. No. 2013-49  
In the Matter of Oleg Cassini, deceased.

Christina Cassini,  
Respondent;  
Marianne Nestor Cassini,  
Appellant.

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. 2013-183  
In the Matter of John Doe 1 &c., et al.,  
Appellants,

v.  
The Board of Education of the Greenport  
Union Free School District, et al.,  
Respondents,  
et al.,  
Defendant.

Motion for leave to appeal denied.

2 SSD 23  
In the Matter of Anthony C. Donofrio, an  
attorney and counselor-at-law.

Grievance Committee for the Tenth Judicial  
District,  
Respondent.

Anthony C. Donofrio, Esq.,  
Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question. Judiciary Law § 90(8) does not provide an independent predicate for an appeal as of right to this Court.

2 Mo. No. 2013-213  
Nadia Dos Santos et al.,  
Appellants,

v.  
Power Authority of the State of New York,  
Respondent,  
Stuart Dean Co., Inc.,  
Defendant.

Motion for reargument of motion for leave to appeal denied.  
Judge Rivera took no part.

1 Mo. No. 2013-448  
EBC I, Inc., &c.,  
Appellant,  
v.  
Goldman Sachs & Co.,  
Respondent.

Motion by Securities Industry and Financial Markets Association 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 and nine copies filed within seven days.

2 Mo. No. 2013-202  
Carol Ann Francis,  
Appellant,  
v.  
Leon D. Dematteis Associates, LLC, et al.,  
Respondents,  
et al.,  
Defendant.

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

1 Mo. No. 2013-211  
Maria Gonzales, et al.,  
Respondents,  
v.  
Ihay Zinner, et al.,  
Respondents,  
Department of Housing Preservation and  
Development,  
Respondent,  
Esquire Group Estates, LLC,  
et al.,  
Intervenors-Appellants.  
(And Another Action.)

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain this motion for leave to appeal from the order of the Appellate Division where the appeal to the Appellate Division was from an order entered on an appeal from another court (see NY Const, art VI, § 3[b][7]; CPLR 5602[a]).

4 Mo. No. 2013-197  
The People &c. ex rel. Michael Gonzalez,  
Appellant,  
v.  
Wayne County Sheriff et al.,  
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2013-124  
In the Matter of Shawn Green,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for reargument of motion for leave to appeal  
denied.  
Judge Rivera took no part.

3 Mo. No. 2013-198  
The People &c. ex rel. Said Gssime,  
Appellant,  
v.  
Daniel F. Martuscello Jr., &c.,  
Respondent.

Motion for reconsideration of this Court's January  
15, 2013 dismissal order denied.  
Judge Rivera took no part.

3 Mo. No. 2013-236  
In the Matter of Martin Hodge,  
Appellant,  
v.  
Andrea Evans, &c.,  
Respondent.

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

1 Mo. No. 2013-289  
The People &c.,  
Respondent,  
v.  
Todd Johnson,  
Appellant.

Motion for assignment of counsel granted and Steven  
Banks, Esq., The Legal Aid Society, 199 Water  
Street, New York, NY 10038 assigned as counsel to  
the appellant on the appeal herein.

3 Mo. No. 2013-154  
In the Matter of Patricia Keane,  
Appellant,  
v.  
Commissioner of Labor,  
Respondent.

Motion for reargument of motion for leave to appeal  
denied.  
Judge Rivera took no part.

Mo. No. 2013-351  
The People &c.,  
Respondent,  
v.  
Ray Lam,  
Appellant.

Motion for assignment of counsel granted and Steven Banks, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2013-387  
The People &c.,  
Respondent,  
v.  
Anthony Lewis,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

3 SSD 22  
M & C Brothers, Inc.,  
Respondent,  
v.  
Bradley W. Torum, et al.,  
Defendants,  
Tatiana Neroni, Esq.,  
Nonparty-Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. Chief Judge Lippman took no part.

2 Mo. No. 2013-81  
Nella Manko,  
Appellant,  
v.  
Elton Strauss, &c., et al.,  
Respondents,  
et al.,  
Defendants.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as denied appellant's motion to renew her prior motion for poor person relief and for the assignment of counsel, 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.

2 Mo. No. 2013-195  
Nella Manko,  
Appellant,  
v.  
Shorefront Apartments, LLC,  
et al.,  
Respondents.

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.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2013-406  
The People &c.,  
Respondent,  
v.  
Christopher Martinez,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2013-349  
The People &c.,  
Respondent,  
v.  
Terence McCray,  
Appellant.

Motion for assignment of counsel granted and Paul J. Connolly, Esq., 2 Wedge Road, Delmar, NY 12054 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2013-222  
In the Matter of Gary Medure,  
Appellant,  
v.  
Hon. Ronald Zweibel, et al.,  
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2013-179  
Heather Mousaw,  
Appellant,  
v.  
City of Olean,  
Respondent.

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

1 Mo. No. 2013-400  
In the Matter of Paul Murphy,  
Respondent,  
v.  
New York State Division of Housing and  
Community Renewal,  
Appellant,  
SouthBridge Towers, Inc.,  
Respondent.

Motion by City of New York 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 and nine copies filed within seven days.

3 Mo. No. 2013-230  
In the Matter of Jeffrey Nieves,  
Appellant,  
v.  
D. Venettozzi, &c.,  
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2013-393  
The People &c.,  
Respondent,  
v.  
Frederick Pagan,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

1 Mo. No. 2013-174  
In the Matter of Tashameeka Valerie P., &c.,  
et al.

Motion for leave to appeal denied.

Priscilla P.,  
Appellant,  
SCO Family of Services,  
Respondent.

Mo. No. 2013-193  
The People &c.,  
Respondent,  
v.  
James Pearson,  
Appellant.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain the motion from the order of the Appellate Term (see CPLR 5602[a]).

1                   SSD 24  
The People &c.,  
    Respondent,  
    v.  
Thomas Riley,  
    Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).

2                   Mo. No. 2013-270  
The People &c.,  
    Respondent,  
    v.  
John Rossi,  
    Appellant.

Motion for assignment of counsel granted and Jillian S. Harrington, Esq., PO Box 6006, Monroe, NJ 08831 assigned as counsel to the appellant on the appeal herein.

1                   Mo. No. 2013-189  
The People &c.,  
    Respondent,  
    v.  
Stacey Sanchez,  
    Appellant.

Motion for leave to appeal denied.

4                   Mo. No. 2013-170  
In the Matter of Kaylene S.  
et al.

Motion for leave to appeal denied.

Erie County Department of Social Services,  
    Respondent;  
Brauna S.,  
    Appellant.

3                   Mo. No. 2013-219  
In the Matter of Francis Smythe,  
    Appellant,  
    v.  
Brian Fischer, &c.,  
    Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2013-207  
The People &c.,  
    Respondent,  
    v.  
Kenneth Snow,  
    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2013-181  
In the Matter of Injah Tafari,  
    Appellant,  
    v.  
Andrea W. Evans, &c.,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-209  
Richard Tully,  
    Appellant,  
    v.  
City of Glen Cove, et al.,  
    Respondents.  
(And Third-Party Actions.)

Motion for leave to appeal denied.

4                    Mo. No. 2013-225  
In the Matter of Maria M.V.,  
    Respondent,  
    v.  
Ryan B.,  
    Appellant.

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

2                    Mo. No. 2013-206  
In the Matter of Raymond Walker,  
    Appellant,  
    v.  
Eric T. Schneiderman, &c., et al.,  
    Respondents.

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

3                    Mo. No. 2013-132  
In the Matter of David Wyche,  
                  Appellant.  
Commissioner of Labor,  
                  Respondent.

Motion for reargument of motion for leave to appeal  
denied.  
Judge Rivera took no part.