

April 30, 2013

CASES

No. 58

Commonwealth of the Northern Mariana
Islands,

Appellant,

v.

Canadian Imperial Bank of Commerce,

Respondent,

William H. Millard,

Defendant,

The Millard Foundation,

Intervenor.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of the Rules of Practice of the New York State Court of Appeals, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified question no. 1 answered in the negative and certified question no. 2 not answered as academic.

Opinion by Judge Rivera.

Chief Judge Lippman and Judges Graffeo, Read, Smith and Pigott concur.

No. 140

Gary Cruz, et al.,

Appellants,

v.

TD Bank, N.A.,

Respondent.

Certification of questions 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.

Geraldo F. Martinez, et al.,

Appellants,

v.

Capital One Bank, N.A.,

Respondent.

Order reversed and a new trial ordered.

Opinion by Judge Graffeo.

Chief Judge Lippman and Judges Read, Smith, Pigott and Rivera concur, Chief Judge Lippman in a separate opinion, in which Judge Rivera concurs.

1 No. 59

The People &c.,

Respondent,

v.

Alex Echevarria,

Appellant.

4 No. 72
In the Matter of Shawn G. Granger,
 Respondent,
 v.
Danielle D. Misercola,
 Appellant.

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

1 No. 61
The People &c.,
 Respondent,
 v.
Martin Johnson,
 Appellant.

Order affirmed.
Opinion by Judge Graffeo.
Judges Read, Smith and Pigott concur.
Chief Judge Lippman dissents in an opinion, in which
Judge Rivera concurs.

2 No. 77
The People &c.,
 Respondent,
 v.
Terrance Monk,
 Appellant.

Order affirmed.
Opinion by Judge Read.
Chief Judge Lippman and Judges Graffeo, Smith and
Pigott concur.
Judge Rivera dissents in an opinion.

1 No. 60
The People &c.,
 Respondent,
 v.
Andrew Moss,
 Appellant.

Order affirmed.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Read, Smith, Pigott
and Rivera concur, Chief Judge Lippman in a
separate opinion, in which Judge Rivera concurs.

4 No. 62
Timothy A. Roulan,
 Appellant,
 v.
County of Onondaga and The Assigned
Counsel Program, Inc.,
 Respondents.

Order modified, without costs, in accordance with the
memorandum herein and, as so modified, affirmed.
Judges Graffeo, Read, Smith, Pigott and Rivera
concur.
Chief Judge Lippman took no part.

MOTIONS

1 Mo. No. 2013-135
Captain Lori Albunio et al.,
 Appellants,
 v.
The City of New York, et al.,
 Defendants,
Mary D. Dorman,
 Nonparty-Respondent.

Motion for leave to appeal granted.

1 Mo. No. 2013-268
Ronald Alleva,
 Plaintiff,
 v.
United Parcel Service, Inc.,
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.

United Parcel Service, Inc.,
 Third-Party Respondent,
 v.
Pitt Investigations, Inc.,
 Third-Party Appellant.

1 Mo. No. 2013-244
Martin Arzu,
 Appellant,
 v.
Spandrel Property Services, Inc. et al.,
 Respondents.

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

1 Mo. No. 2013-259
In the Matter of Robert Cabeza,
 Appellant,
 v.
New York City Police Department,
 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. 2013-186
In the Matter of Commissioner of Social
Services on behalf of Hasime C.,
 Respondent,
 v.
Kastriot D.,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2013-267
In the Matter of Anastasia C.

Cattaraugus County Department of Social
Services,
 Respondent;
Ronnie C.,
 Appellant.
(And Three Other Proceedings.)

Motion for leave to appeal denied.

3 SSD 27
In the Matter of James Curry,
 Appellant,
 v.
Andrea Evans &c., et al.,
 Respondents.

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

1 Mo. No. 2013-262
In the Matter of Sukwa Sincere G., &c.

Shamiqua Latisha S.,
 Appellant,
Catholic Guardian Society and Home Bureau,
et al.,
 Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2013-246
In the Matter of Shawn G. Granger,
Respondent,
v.
Danielle D. Misercola,
Appellant.

Motion to strike addendum to respondent's brief and references thereto in respondent's brief granted.

1 Mo. No. 2013-243
Dana Hammond et al.,
Appellants,
v.
The City of New York,
Respondent.

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

2 Mo. No. 2013-247
The People &c.,
Respondent,
v.
Ray Hilliman,
Appellant.

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

4 Mo. No. 2013-203
Lori Hoover, et al.,
Respondents,
v.
New Holland North America, Inc., &c., et al.,
Appellants,
et al.,
Defendants.
(And a Third-Party Action.)

Motion for leave to appeal granted.

2 Mo. No. 2013-165
The People &c.,
Respondent,
v.
Wayne James, also known as Carl Wayne
James,
Appellant.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]).

2 Mo. No. 2013-224
In the Matter of Diamond J. (Anonymous).

Administration for Children's Services,
Appellant;
Nakesha J. (Anonymous),
Respondent.
(And Four Other Proceedings.)

Motion for leave to appeal denied.

2 Mo. No. 2013-194
Nella Manko,
Appellant,
v.
Bernard H. Broome, et al.,
Respondents.

Motion for leave to appeal dismissed as untimely
(see CPLR 5513[b]).
Motion for poor person relief dismissed as academic.

2 Mo. No. 2013-196
Nella Manko,
Appellant,
v.
Professional Evaluation Group, Inc.,
Respondent,
et al.,
Defendants.

Motion for leave to appeal dismissed as untimely
(see CPLR 5513[b]).
Motion for poor person relief dismissed as academic.
Cross motion to hold appellant in contempt denied.

2 Mo. No. 2013-245
In the Matter of Kevin Martin,
Appellant,
v.
Teresa Tate,
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. 2013-238
MatlinPatterson ATA Holdings LLC,
Appellant,
v.
Federal Express Corporation,
Respondent.

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

1 Mo. No. 2013-265
Miles Matsumura,
Appellant,
v.
Smart LLC, &c., et al.,
Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2013-264
In the Matter of the State of New York,
Respondent,
v.
Michael M.,
Appellant.

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

1 Mo. No. 2013-216
James L. Melcher,
Appellant,
v.
Greenberg Traurig, LLP, et al.,
Respondents.

Motion to dismiss appeal denied.

3 Mo. No. 2013-229
In the Matter of New York State Health
Facilities Association, Inc., &c.,
Appellant,
v.
James G. Sheehan, &c., et al.,
Respondents.

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

3 Mo. No. 2013-306
In the Matter of New York State Health
Facilities Association, Inc., &c.,
 Appellant,
 v.
James G. Sheehan, &c., et al.,
 Respondents.

Motion by LeadingAge New York for leave to
appear amicus curiae on the motion for leave to
appeal herein granted, and the memorandum of law
is accepted as filed.

4 Mo. No. 2013-253
In the Matter of Niagara Frontier Transit
Metro System, Inc.,
 Appellant,
 v.
Amalgamated Transit Local Union 1342 et
al.,
 Respondents.

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

2 SSD 26
In the Matter of Town of North Hempstead,
 Appellant,
 v.
County of Nassau, et al.,
 Respondents.

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

3 Mo. No. 2013-263
In the Matter of Oakwood Property
Management, LLC,
 Appellant,
 v.
Town of Brunswick et al.,
 Respondents.

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

4 Mo. No. 2013-266
In the Matter of the Estate of Gary M.
Phillips, Deceased.

Kelly E. Heberlein, &c.,
 Respondent;
Cheril M. Eberth, et al.,
 Respondents;
Lorrie MacDiarmid,
 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.

3 Mo. No. 2013-182
Alice Putney et al.,
 Appellants,
 v.
The People of the State of New York, Acting
By and Through the Power Authority of the
State of New York, et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as dismissed the appeal from Supreme Court's order denying reargument, 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.

3 Mo. No. 2013-260
The People &c. ex rel. Rafael Rodriguez,
 Appellant,
 v.
William Lee, &c.,
 Respondent.

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

2 Mo. No. 2013-252
In the Matter of Joseph Romain,
 Appellant,
 v.
State Division of Human Rights,
et al.,
 Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2013-102
In the Matter of Cadence SS., &c.

Amy RR.,
Appellant;
Joshua SS.,
Respondent;
et al.,
Respondents.

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

1 Mo. No. 2013-248
Uniformed Fire Officers Association, Local
854, &c., et al.,
Respondents,
v.
The City of New York,
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.

3 Mo. No. 2013-242
Vincent David Urban,
Respondent,
v.
City of Albany,
Appellant.

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

2 Mo. No. 2013-241
The People &c.,
Respondent,
v.
Santos Velez,
Appellant.

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

3 Mo. No. 2013-237
Scott VV.,
Respondent,
v.
Joy VV.,
Appellant.

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

1 Mo. No. 2013-180
Wendy Webb-Weber,
 Appellant,
 v.
Community Action for Human Services, Inc.,
et al.,
 Respondents,
et al.,
 Defendants.

Motion to enlarge the record on appeal granted.

2 Mo. No. 2013-255
Westchester County Correction Officers
Benevolent Association, Inc., et al.,
 Appellants,
 v.
County of Westchester, et al.,
 Respondents.
Index No. 22156/07

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

2 Mo. No. 2013-256
Westchester County Correction Officers
Benevolent Association, Inc., et al.,
 Appellants,
 v.
County of Westchester, et al.,
 Respondents.
Index No. 13294/10

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