

December 17, 2019

**CASES**

No. 103  
The People &c.,  
Respondent,  
v.  
Mauricio Altamirano,  
Appellant.

Order affirmed.  
Opinion by Judge Stein.  
Chief Judge DiFiore and Judges Garcia and Feinman  
concur.  
Judge Fahey concurs in result in an opinion.  
Judge Rivera dissents in an opinion in which Judge  
Wilson concurs.

1 No. 100  
In the Matter of Franklin Street Realty Corp.,  
Appellant,  
v.  
NYC Environmental Control Board, et al.,  
Respondents.  
(And Three Other Proceedings.)

Order affirmed, with costs.  
Opinion by Judge Wilson.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia and Feinman concur.

2 No. 102  
The People &c.,  
Respondent,  
v.  
David Mairena,  
Appellant.

Order affirmed.  
Opinion by Judge Stein.  
Chief Judge DiFiore and Judges Garcia and Feinman  
concur.  
Judge Fahey concurs in result in an opinion.  
Judge Rivera dissents in an opinion in which Judge  
Wilson concurs.

4 No. 117 SSM 22  
Daniel Mancuso, &c.,  
Respondent,  
v.  
Kaleida Health, &c.,  
Appellant.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs. In the  
circumstances of this case, Supreme Court did not err  
or abuse its discretion by precluding defendant from  
asserting a CPLR article 16 defense.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia, Wilson and Feinman concur.

2                    No. 101  
The People &c.,  
    Respondent,  
    v.  
Ramee McCullum,  
    Appellant.

Order affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia, Wilson and Feinman concur.

4                    No. 118 SSM 24  
The People &c.,  
    Respondent,  
    v.  
Rudy C. Patterson,  
    Appellant.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Stein, Garcia and  
Feinman concur.  
Judge Fahey dissents in part in an opinion in which  
Judges Rivera and Wilson concur.

3                    No. 106  
In the Matter of The Plastic Surgery Group,  
P.C.,  
    Appellant,  
    v.  
Comptroller of the State of New York,  
    Respondent.

Order affirmed, with costs.  
Opinion by Judge Fahey.  
Chief Judge DiFiore and Judges Rivera, Stein,  
Garcia, Wilson and Feinman concur.

4                    No. 99  
Ann Vanyo,  
    Appellant,  
    v.  
Buffalo Police Benevolent Association, Inc. et  
al.,  
    Respondents.

Order insofar as appealed from modified, without  
costs, in accordance with the memorandum herein  
and, as so modified, affirmed.  
Chief Judge DiFiore and Judges Stein, Fahey, Garcia,  
Wilson and Feinman concur.  
Judge Rivera dissents in an opinion.

## MOTIONS

1                    SSD 78  
In the Matter of A.V., &c.,  
    Appellant;  
Presentment Agency,  
    Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the two-Justice dissent at the Appellate Division is not on a question of law (see CPLR 5601[a]).  
Judge Feinman took no part.

1                    Mo. No. 2019-1127  
The People &c.,  
    Respondent,  
    v.  
Anonymous,  
    Appellant.

Motion by The Legal Aid Society 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, nine copies filed, and the brief submitted in digital format within seven days.

4                    Mo. No. 2019-1068  
The People &c.,  
    Respondent,  
    v.  
Mohsin H. Alsaaidi,  
    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. 2019-705  
Anna Aybar, et al.,  
    Appellants,  
    v.  
Jose A. Aybar, Jr., et al.,  
    Defendants,  
Ford Motor Company et al.,  
    Respondents;  
U.S. Tires and Wheels of Queens, LLC,  
    Nonparty-Respondent.

Motion for leave to appeal granted.

4 Mo. No. 2019-888  
In the Matter of Leon C. Bloom, Jr.,  
Appellant,  
v.  
Kati Mancuso,  
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2019-879  
Jesse Cole,  
Respondent,  
v.  
Samantha Cole,  
Appellant.

Motion for leave to appeal granted.

1 Mo. No. 2019-1101  
Daniel Collazo, et al.,  
Appellants,  
v.  
Netherland Property Assets LLC et al.,  
Respondents.

Motion by Lawrence Chaifetz, et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

Mo. No. 2019-1045  
The People &c.,  
Appellant,  
v.  
Jack J. Cucceraldo,  
Respondent.

Motion to disqualify Traffic Prosecutor's Office from acting as appellant's counsel on appeal denied.

1 Mo. No. 2019-1018  
In the Matter of Part 60 Put-Back Litigation.  
  
Deutsche Bank National Trust Company, &c.,  
Respondent,  
v.  
Morgan Stanley Mortgage Capital Holdings  
LLC, &c., et al.,  
Appellants.

Motion by Miriam R. Albert, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.  
Chief Judge DiFiore and Judge Garcia took no part.

1                    Mo. No. 2019-1113  
In the Matter of Part 60 Put-Back Litigation.

Deutsche Bank National Trust Company, &c.,  
Respondent,

v.

Morgan Stanley Mortgage Capital Holdings  
LLC, &c., et al.,  
Appellants.

Motion by James M. Peaslee 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, nine copies filed, and the brief submitted in digital format within seven days. Chief Judge DiFiore and Judge Garcia took no part.

2                    SSD 77  
Eltingville Lutheran Church,  
Appellant,

v.

Robert Rimbo, &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. 2019-794  
In the Matter of Samy F.,  
Respondent,

v.

Ralph Fabrizio, &c.,  
Respondent,  
Darcel D. Clark,  
Nonparty-Appellant.

Motion for leave to appeal dismissed upon the ground that the order of the Appellate Division sought to be appealed from has been vacated and superseded by a subsequent order of that court. Motion for a stay dismissed as academic.

1                    Mo. No. 2019-920  
In the Matter of Samy F.,  
Respondent,

v.

Ralph Fabrizio, &c.,  
Respondent,  
Darcel D. Clark,  
Nonparty-Appellant.

Motion for leave to appeal dismissed upon the ground that movant is not a party aggrieved (see CPLR 5511). Motion for a stay dismissed as academic.

2 Mo. No. 2019-854  
In the Matter of Shahzad Gulzar,  
Appellant,  
v.  
Shandy Gulzar,  
Respondent.

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

2 Mo. No. 2019-1069  
The People &c.,  
Respondent,  
v.  
Eric Ibarguen,  
Appellant.

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

Mo. No. 2019-1044  
The People &c.,  
Appellant,  
v.  
Eric J. Iverson,  
Respondent.

Motion to disqualify Traffic Prosecutor's Office from  
acting as appellant's counsel on appeal denied.

3 Mo. No. 2019-809  
In the Matter of Kanya J.,  
Appellant,  
v.  
Christopher K.,  
Respondent.  
(Proceeding No. 1.)  
(And Another Related Proceeding.)

Motion for leave to appeal denied.

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In the Matter of Christopher K.,  
Respondent,  
v.  
Kanya J.,  
Appellant.  
(Proceeding No. 3.)  
(And Three Other Related Proceedings.)

3 Mo. No. 2019-1109  
The People &c. ex rel. Fred Johnson,  
Appellant,  
v.  
Superintendent, Adirondack Correctional  
Facility, et al.,  
Respondents.

Motion for poor person relief granted.

2 Mo. No. 2019-1092  
In the Matter of Tina Leggio,  
Appellant,  
v.  
Sharon Devine, &c. et al.,  
Respondents.

Motion by Empire Justice Center 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.

2 Mo. No. 2019-747  
In the Matter of Innocence A. M.-F.  
  
Coalition for Hispanic Family Services,  
Respondent;  
Khadijah N. M.-F.,  
Appellant.

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

2 SSD 75  
Nella Manko,  
Appellant,  
v.  
David A. Gabay, &c., et al.,  
Respondents.  
(Index No. 25157/10)

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.

2                    SSD 80  
Nella Manko,  
                  Appellant,  
          v.  
David A. Gabay, &c., et al.,  
                  Respondents.  
(Index No. 22148/13)

Appeal, insofar as taken from the Appellate Division orders affirming the October 2015 and April 2016 Supreme Court orders, dismissed without costs, by the Court sua sponte, upon the ground that such orders do not finally determine the action within the meaning of the Constitution; appeal otherwise dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies as of right from the unanimous orders of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601).

2                    Mo. No. 2019-1006  
Nella Manko,  
                  Appellant,  
          v.  
Lenox Hill Hospital,  
                  Respondent.

Motion for reargument of motion for leave to appeal dismissed as untimely (see Rules of Ct of Appeals [22 NYCRR] § 500.24[b]).  
Motion for poor person relief dismissed as academic.

2                    Mo. No. 2019-909  
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.

2                    SSD 79  
Bryan C. Murphy,  
                  Plaintiff,  
          v.  
Town of Oyster Bay,  
                  Appellant,  
State of New York,  
                  Respondent,  
et al.,  
                  Defendants.

Appeal, insofar as taken from the Appellate Division order denying defendant Town of Oyster Bay's motion for renewal or for leave to appeal to this Court, dismissed without costs, by the Court sua sponte, upon the ground that such order does not finally determine the action within the meaning of the Constitution; appeal otherwise dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.



3 Mo. No. 2019-907  
In the Matter of Stephen N.,  
Respondent,  
v.  
Amanda O.,  
Respondent,  
William P.,  
Appellant.

SSD 76  
Narra Chiropractic, P.C. A/A/O Mayra Chica,  
Appellant,  
v.  
State Farm Mutual Automobile Ins. Co.,  
Respondent.

SSD 81  
James Pettus,  
Appellant,  
v.  
Board of Directors, Owners, 800 Grand  
Concourse,  
Respondent.  
(Index Nos. 2100/2018 and 2184/2018)

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James Pettus,  
Appellant,  
v.  
Bryan Mazzola, et al.,  
Respondents.  
(Index No. 2390/2018)

Mo. No. 2019-989  
James Pettus,  
Appellant,  
v.  
Laura Douglas, et al.,  
Respondents.  
(Index No. 300213/2018)

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

Appeal transferred without costs, by the Court sua  
sponte, to the Appellate Term, First Department,  
upon the ground that a direct appeal does not lie  
when questions other than the constitutional validity  
of a statutory provision are involved (see NY Const,  
art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

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

On the Court's own motion, appeal transferred,  
without costs, to the Appellate Division, First  
Department, upon the ground that a direct appeal  
does not lie (see NY Const, art VI, §§ 3[b][2], 5[b];  
CPLR 5601[b][2]).  
Motion by respondents for the imposition of  
sanctions &c. denied.

Mo. No. 2019-990  
James Pettus,  
Appellant,  
v.  
Board of Directors et al.,  
Respondents.  
(Index No. 260012/2018)

On the Court's own motion, appeal transferred, without costs, to the Appellate Division, First Department, upon the ground that a direct appeal does not lie (see NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).  
Motion by respondents for the imposition of sanctions &c. denied.

Mo. No. 2019-991  
James Pettus,  
Appellant,  
v.  
Board of Directors, Owners, 800 Grand Concourse,  
Respondent.  
(Index Nos. 2100/18 and 2184/18)

Motion by respondent for the imposition of sanctions &c. denied.

Mo. No. 2019-992  
James Pettus,  
Appellant,  
v.  
Bryan Mazzola, et al.,  
Respondents.  
(Index No. 2390/18)

Motion by respondents for the imposition of sanctions &c. denied.

1 Mo. No. 2019-628  
In the Matter of James Pettus, et al.,  
Appellants,  
v.  
Board of Directors, et al.,  
Respondents.  
(App. Div. No. M-883)

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding 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 proceeding within the meaning of the Constitution.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2019-986  
In the Matter of James Pettus, et al.,  
Appellants,  
v.  
Board of Directors, et al.,  
Respondents.  
(App. Div. No. M-883)

Mo. No. 2019-627  
James Pettus,  
Appellant,  
v.  
Charles Greenthal et al.,  
Respondents.  
(Index No. 260016/2019)

Mo. No. 2019-987  
James Pettus,  
Appellant,  
v.  
Charles Greenthal et al.,  
Respondents.  
(Index No. 260016/2019)

Mo. No. 2019-988  
James Pettus,  
Appellant,  
v.  
Board of Directors, Owners 800 Grand  
Concourse,  
Respondent.  
(Index No. 260040/2018)

Motion by respondents for the imposition of  
sanctions &c. denied.

On the Court's own motion, appeal transferred,  
without costs, to the Appellate Division, First  
Department, upon the ground that a direct appeal  
does not lie (see NY Const, art VI, §§ 3[b][2], 5[b];  
CPLR 5601[b][2]).  
Motion for leave to appeal dismissed upon the  
ground that this Court does not have jurisdiction to  
entertain it (see NY Const, art VI, § 3[b]; CPLR  
5602).

Motion for poor person relief dismissed as academic.

Motion by respondents for the imposition of  
sanctions &c. denied.

On the Court's own motion, appeal transferred,  
without costs, to the Appellate Division, First  
Department, upon the ground that a direct appeal  
does not lie (see NY Const, art VI, §§ 3[b][2], 5[b];  
CPLR 5601[b][2]).  
Motion by respondent for the imposition of sanctions  
&c. denied.

1 Mo. No. 2019-1099  
Joel Raden et al.,  
Appellants,  
v.  
W7879, LLC, et al.,  
Respondents.

Motion by Jacobus Gomes, et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2019-1097  
In the Matter of Regina Metropolitan Co.,  
LLC,  
Respondent,  
v.  
New York State Division of Housing and  
Community Renewal,  
Appellant,  
Leslie E. Carr et al.,  
Intervenors-Respondents.

Motion by Community Housing Improvement Program et al. for leave to file a brief amici curiae on the appeal herein granted and the amended proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2019-1098  
In the Matter of Regina Metropolitan Co.,  
LLC,  
Respondent,  
v.  
New York State Division of Housing and  
Community Renewal,  
Appellant,  
Leslie E. Carr et al.,  
Intervenors-Respondents.

Motion by Stephenie Futch, et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2019-1100  
Elizabeth Reich, et al.,  
Appellants,  
v.  
Belnord Partners, LLC, et al.,  
Respondents.

Motion by Peter Gunther, et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

4                    Mo. No. 2019-861  
In the Matter of Jesenia E. Santos,  
                         Respondent,  
                         v.  
Rashad Muhammed,  
                         Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2019-1070  
Sutton 58 Associates LLC,  
                         Appellant,  
                         v.  
Philip Pilevsky, et al.,  
                         Respondents.

Motion by American College of Mortgage Attorneys for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1                    Mo. No. 2019-634  
In the Matter of Efrain T. Jr.,  
                         Respondent,  
                         v.  
Erika R.,  
                         Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2019-793  
In the Matter of Leslie T., Jr.  
  
Suffolk County Department of Social  
Services,  
                         Respondent;  
Naomi S.,  
                         Respondent;  
Unkechaug Indian Nation,  
                         Nonparty-Appellant.  
(And Another Proceeding.)

Motion for leave to appeal denied.

1                    Mo. No. 2019-1102  
James Taylor et al.,  
    Respondents,  
    v.  
72A Realty Associates, L.P.,  
    Appellant,  
et al.,  
    Defendant.

Motion by Stuart Davidson-Tribbs, et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

4                    Mo. No. 2018-477  
Ann Vanyo,  
    Appellant,  
    v.  
Buffalo Police Benevolent Association, Inc. et  
al.,  
    Respondents.

Motion, treated as seeking leave to appeal from the Appellate Division order dismissing the appeal from the Supreme Court paper in Appellate Division Appeal No. 1, dismissed upon the ground that the order does not finally determine the action within the meaning of the Constitution.

3                    Mo. No. 2019-1090  
In the Matter of the Claim of Luis A. Vega,  
    Respondent,  
Postmates Inc.,  
    Respondent,  
Commissioner of Labor,  
    Appellant.

Motion by New York State AFL-CIO for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. One copy 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. 2019-1075  
The People &c.,  
    Respondent,  
    v.  
Cadman Williams,  
    Appellant.

Motion by The Legal Aid Society for leave to appear amicus curiae on the appeals herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

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The People &c.,  
    Respondent,  
    v.  
Elijah Foster-Bey,  
    Appellant.

3                    Mo. No. 2019-805  
In the Matter of Baby Girl XX., &c.

Motion for leave to appeal denied.

Christine K. et al.,  
    Respondents;  
Kimberly XX.,  
    Appellant.