

State of New York
Court of Appeals

Decisions

November 17, 2022

CASES

3 No. 83
Roxanne Delgado, et al.,
 Appellants,
 v.
State of New York et al.,
 Respondents.

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

2 No. 85
Everhome Mortgage Company,
 Appellant,
 v.
Nuchem Aber et al.,
 Respondents,
et al.,
 Defendants.

Order affirmed, with costs, in a memorandum.
Acting Chief Judge Cannataro and Judges Rivera,
Garcia, Wilson, Singas and Troutman concur.

2 No. 84
Federal National Mortgage Association, &c.,
 Appellant,
 v.
Maxi Jeanty, &c. et al.,
 Respondents,
et al.,
 Defendants.

Order reversed, with costs, plaintiff's motion for
summary judgment on the complaint as against
defendants Maxi Jeanty and Sherley Jeanty and for
an order of reference granted, and the Jeanty
defendants' cross motion for summary judgment
denied, in a memorandum.
Acting Chief Judge Cannataro and Judges Rivera,
Garcia, Wilson, Singas and Troutman concur.

2 No. 88
The People &c.,
 Respondent,
 v.
Luis Jimenez,
 Appellant.

Order affirmed.
Opinion by Judge Rivera.
Acting Chief Judge Cannataro and Judges Garcia,
Wilson, Singas and Troutman concur.

4 No. 74
The People &c.,
 Respondent,
 v.
Ronald K. Johnson,
 Appellant.

Order, insofar as appealed from, reversed and case
remitted to the Appellate Division, Fourth
Department, for further proceedings in accordance
with the opinion herein.
Opinion by Judge Wilson.
Acting Chief Judge Cannataro and Judges Rivera,
Garcia, Singas and Troutman concur.

MOTIONS

Mo. No. 2022-595
In the Matter of 139 State Route 208 LLC,
Appellant,
v.
Zoning Board of Appeals, Town of New
Paltz,
Respondent.

Motion for leave to appeal dismissed upon the ground that the Court of Appeals lacks jurisdiction to entertain it (*see* NY Const, art VI, § 3; CPLR 5602).

1 Mo. No. 2022-747
The People &c.,
Respondent,
v.
Gonzalo Aguilar,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2022-508
Alfredo Aragona, et al.,
Appellants,
v.
State of New York, et al.,
Respondents.

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

2 Mo. No. 2022-743
The People &c.,
Respondent,
v.
Melvin Baez,
Appellant.

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

2 Mo. No. 2022-578
The People &c.,
Respondent,
v.
Derrick Bonds,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-604
In the Matter of the Estate of Ralph W.
Burrows, &c.

Ji Ting Wang Burrows, &c. et al.,
 Respondents;
Marcia Burrows, &c.,
 Appellant.

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

2 Mo. No. 2022-598
In the Matter of Civil Service Employees
Association, Inc., Local 100, AFSCME, AFL-
CIO,
 Petitioner,
Jillian Rizo-Brewington,
 Appellant,
 v.
City of Mount Vernon, et al.,
 Respondents.

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

1 Mo. No. 2022-551
Consolidated Restaurant Operations, Inc.,
 Appellant,
 v.
Westport Insurance Corporation,
 Respondent.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as resolved the appeal from Supreme Court's September 2021 order, 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 granted.

1 Mo. No. 2022-559
Consolidated Restaurant Operations, Inc.,
 Appellant,
 v.
Westport Insurance Corporation,
 Respondent.

Motion by Chefs' Warehouse Inc., et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

1 Mo. No. 2022-592
Consolidated Restaurant Operations, Inc.,
Appellant,
v.
Westport Insurance Corporation,
Respondent.

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

1 Mo. No. 2022-620
In the Matter of Michael Dimino,
Appellant,
v.
Dermot F. Shea, &c., et al.,
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2022-631
In the Matter of the Estate of E. Lowell
Dorris, &c.

Motion for leave to appeal denied.

Benjamin Robinson,
Respondent,
Maurie O'Neill, et al.,
Appellants,
v.
Luis Freddy Molano,
Respondent.

2 Mo. No. 2022-664
In the Matter of Yarelis E.

Administration for Children's Services,
Respondent;
Franly E.,
Appellant.
(App. Div. No. 2021-09479)

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.

4 SSD 47
In the Matter of John W. Eisenhower et al.,
Appellants,
v.
Watertown City School District, et al.,
Respondents.

Appeal, insofar as taken from the Appellate Division order dismissing the appeal from the superseded Supreme Court judgment, dismissed without costs, by the Court *sua sponte*, upon the ground that such order does not finally determine the proceeding 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.

1 Mo. No. 2022-542
In the Matter of Roberto Fata,
Appellant,
v.
Dermot F. Shea, &c.,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2022-568
In the Matter of the Claim of Mack Fuller,
Claimant,
v.
NYC Transit Authority,
Appellant.
Workers' Compensation Board,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2022-596
In the Matter of the Claim of Mack Fuller,
Claimant,
v.
NYC Transit Authority,
Appellant.
Workers' Compensation Board,
Respondent.

Motion by Consolidated Edison Co. of N.Y., Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted and the proposed brief is accepted as filed.

3 Mo. No. 2022-630
In the Matter of the Claim of Mack Fuller,
 Claimant,
 v.
NYC Transit Authority,
 Appellant.
Workers' Compensation Board,
 Respondent.

Motion by Wegmans Food Markets, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein granted and the proposed brief is accepted as filed.

3 Mo. No. 2022-573
In the Matter of the Claim of Christopher M.
Gabel,
 Respondent.
Bankers Life and Casualty Company,
 Appellant.
Commissioner of Labor,
 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. 2022-591
Imelda Garcia,
 Plaintiff,
 v.
Darshah Shah, et al.,
 Respondents;
Occidental Fire & Casualty Company of
North Carolina,
 Appellant.

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

2 Mo. No. 2022-761
The People &c.,
 Respondent,
 v.
Battista Geritano,
 Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 dismissed as untimely.

1 Mo. No. 2022-617
State of New York ex rel. Alex Grabcheski,
Appellant,
v.
American International Group, Inc. et al.,
Respondents.

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

1 Mo. No. 2022-726
The People &c.,
Respondent,
v.
Stanley Holmes,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2022-634
In the Matter of Michael Janowsky,
Appellant,
v.
Emily Monte,
Respondent.

Motion for leave to appeal denied.
Judge Troutman took no part.

1 Mo. No. 2022-619
In the Matter of David Lopez,
Appellant,
v.
Dermot F. Shea, &c., et al.,
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2022-589
In the Matter of the Claim of Anthony Martin,
Respondent.
Trucking Support Services, LLC,
Appellant.
Commissioner of Labor,
Respondent.

In the Matter of the Claim of Anthony Martin,
Respondent.
Distribution Cooperative Network of NY,
Appellant.
Commissioner of Labor,
Respondent.

2 Mo. No. 2022-794
The People &c.,
Respondent,
v.
Christopher McGhee,
Appellant.

2 Mo. No. 2022-628
The People &c.,
Respondent,
v.
Rogelio Mendez,
Appellant.

3 Mo. No. 2022-572
In the Matter of the Claim of Paul Paratore,
Respondent.
Bankers Life and Casualty Company,
Appellant.
Commissioner of Labor,
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceedings within the meaning of the Constitution.

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.

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

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.

4 Mo. No. 2022-615
In the Matter of Jiryan S.

Onondaga County Department of Children
and Family Services,
Respondent;
Tammy (Also Known as Tamara) D.,
Respondent,
Jason S.,
Appellant.

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

1 Mo. No. 2022-473
Lillian F. Schwartz,
Appellant,
v.
A. Michael Noll et al.,
Respondents.

Motion for leave to appeal insofar as asserted against
defendant A. Michael Noll 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 leave to appeal
insofar as asserted against defendant Kenneth
Knowlton dismissed upon the ground that timely
substitution has not been made (*see* CPLR 1021).

3 Mo. No. 2022-533
In the Matter of Dana Scuderi-Hunter,
Appellant,
v.
County of Delaware, et al.,
Respondents.

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

1 Mo. No. 2022-780
The People &c.,
Respondent,
v.
Steven Sidbury,
Appellant.

Motion for assignment of counsel granted and
Caprice R. Jenerson, Esq., Office of the Appellate
Defender, 11 Park Place, Suite 1601, New York, NY
10007 assigned as counsel to the appellant on the
appeal herein.

4 Mo. No. 2022-623
The People &c.,
Respondent,
v.
Michael Stevens,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-768
Tax Equity Now NY LLC,
Appellant,
v.
City of New York et al.,
Respondents,
State of New York et al.,
Respondents.

Motion by Citizens Budget Commission 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

4 Mo. No. 2022-608
In the Matter of Diane O. Tomlinson et al.,
Respondents,
v.
Charles Horton,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.
Judge Troutman took no part.

3 Mo. No. 2022-519
The People &c.,
Respondent,
v.
Kenneth K. Washburn,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-735
The People &c.,
Respondent,
v.
Freddie T. Wright,
Appellant.

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

1 SSD 44
In the Matter of Irma Zelig,
 Respondent,
 v.
State of New York Division of Housing and
Community Renewal, et al.,
 Respondents.
Aspenly Company LLC,
 Intervenor-Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies from an order from which appellant previously appealed (*see Matter of Zelig v State of New York Div. of Hous. & Community Renewal*, 36 NY3d 1079 [2021]).