

April 28, 2011

**CASES**

No. 63  
Bessemer Trust Company, N.A.,  
Respondent,  
v.  
Francis S. Branin, Jr.,  
Appellant.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question 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 answered in accordance with the opinion herein.

Opinion by Judge Ciparick.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Jones concur.

4                   No. 145   SSM 13  
Trudi L. Bronson,  
Appellant,  
v.  
Allen J. Hansel,  
Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

1                   No. 65  
The People &c.,  
Respondent,  
v.  
John Lingle,  
Appellant.

Order affirmed.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.

1                   No. 67  
The People &c.,  
Respondent,  
v.  
Dominique Murrell,  
Appellant.

Order affirmed.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges Ciparick, Graffeo, Smith, Pigott and Jones concur.

2                   No. 66  
The People &c.,  
                  Respondent,  
          v.  
John Parisi,  
                  Appellant.

Order affirmed.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges  
Ciparick, Graffeo, Smith, Pigott and  
Jones concur.

2                   No. 68  
The People &c.,  
                  Respondent,  
          v.  
John Prendergast,  
                  Appellant.

Order affirmed.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges  
Ciparick, Graffeo, Smith, Pigott and  
Jones concur.

1                   No. 86  
The People &c.,  
                  Respondent,  
          v.  
Manuel Rodriguez,  
                  Appellant.

Order affirmed.  
Opinion by Judge Read.  
Judges Graffeo, Smith and Pigott  
concur.  
Judge Ciparick dissents and votes to  
reverse in an opinion in which Chief  
Judge Lippman and Judge Jones concur.

1                   No. 84  
In the Matter of James J.  
Seiferheld,  
                  Respondent,  
          v.  
Raymond Kelly, &c., et al.,  
                  Appellants.

Order affirmed, without costs, and  
certified question answered in the  
affirmative.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges  
Ciparick, Graffeo, Read and Jones  
concur.  
Judge Pigott dissents and votes to  
reverse in an opinion.

2                    No. 87  
The People &c.,  
                    Appellant,  
                    v.  
Darryl Sharlow,  
                    Respondent.

Order reversed and resentence imposed  
by Supreme Court, Kings County,  
reinstated.  
Opinion by Judge Read.  
Judges Graffeo, Smith and Pigott  
concur.  
Judge Ciparick dissents and votes to  
affirm in an opinion in which Chief  
Judge Lippman and Judge Jones concur.

**MOTIONS**

2                    Mo. No. 2011-328  
The People &c.,  
                      Respondent,  
                      v.  
Luis Alvarez,  
                      Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2011-233  
In the Matter of Michael Bifulco,  
                      Appellant,  
                      v.  
Raymond W. Kelly, &c., et al.,  
                      Respondents.

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

2                    Mo. No. 2011-131  
Kathryn M. Boone,  
                      Appellant,  
                      v.  
Joel C. Bender, &c., et al.,  
                      Respondents.

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

3                    Mo. No. 2011-182  
The People,  
                      Respondent,  
                      v.  
Scott A. Bunger,  
                      Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2011-198  
Donald Cardiff, et al.,  
                      Appellants,  
                      v.  
Robert M. Carrier, &c., et al.,  
                      Defendants,  
Vito Piemonte, &c., et al.,  
                      Respondents.

Motion for leave to appeal denied.

3                   Mo. No. 2011-194  
In the Matter of Joseph Cardone  
III,  
                  Appellant,  
          v.  
Interstate Drywall et al.,  
          Respondents.  
Workers' Compensation Board,  
          Respondent.

Motion for leave to appeal denied.

1                   SSD 16  
In the Matter of Felipe  
Concepcion,  
                  Appellant,  
          v.  
Hon. Robert T. Johnson, &c.,  
          Respondent.

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

4                   Mo. No. 2011-416  
Farrah Donald,  
                  Appellant,  
          v.  
State of New York,  
          Respondent.

Motion by Sidney Burch 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. Two copies of the  
brief must be served and 19 copies  
filed within seven days.

1                   Mo. No. 2011-423  
Gloria Doomes, &c.,  
                  Appellant,  
          v.  
Best Transit Corp., et al.,  
          Defendants,  
Warrick Industries, Inc., &c.,  
          Respondent.

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Ana Jiminian, &c.,  
                  Appellant,  
          v.  
Best Transit Corp., et al.,  
          Defendants,  
Warrick Industries, Inc., &c.,  
          Respondent.

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Kelli Rivera,  
                  Appellant,  
          v.  
Best Transit Corp., et al.,  
          Defendants,  
Warrick Industries, Inc., &c.,  
          Respondent.

3                   Mo. No. 2011-142  
Eagles Landing, LLC,  
                  Appellant,  
          v.  
New York City Department of  
Environmental Protection et al.,  
          Respondents.

2                   Mo. No. 2011-193  
The People &c.,  
                  Respondent,  
          v.  
Lionel England,  
                  Appellant.

Motion by United Motorcoach  
Association, Inc. 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 24 copies  
filed within seven days.

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

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

1                   Mo. No. 2011-120  
Er-Loom Realty, LLC, et al.,  
                  Respondents,  
                  v.  
Prelosh Realty, LLC, et al.,  
                  Appellants.

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

3                   Mo. No. 2011-250  
In the Matter of Robert S.  
Ferguson,  
                  Respondent,  
                  v.  
Jeffrey Michael Skelly,  
                  Respondent,  
Heather J. Skelly-Ferguson,  
                  Appellant,  
et al.,  
                  Respondent.

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

3                   Mo. No. 2011-79  
In the Matter of Shawn Green,  
                  Appellant,  
                  v.  
Brian Fischer, &c.,  
                  Respondent.  
(And Another Related Proceeding.)

Motion for leave to appeal denied.

3                   Mo. No. 2011-184  
In the Matter of Juan Hernandez,  
                  Appellant,  
                  v.  
Brian Fischer, &c.,  
                  Respondent.

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

3                   Mo. No. 2011-229  
In the Matter of Bajro Hot,  
                  Appellant,  
                  v.  
New York State Department of  
Correctional Services et al.,  
                  Respondents.

Motion for leave to appeal denied.

4                    Mo. No. 2011-268  
In the Matter of Shannon Huard,  
                          Respondent,  
                          v.  
Jose Lugo,  
                          Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2011-234  
In the Matter of Liston J.  
(Anonymous),  
                          Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2011-220  
In the Matter of Mitchell  
Kalwasinski,  
                          Appellant,  
                          v.  
David Paterson, &c., et al.,  
                          Respondents.

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

3                    Mo. No. 2011-192  
Bryn Kelsey,  
                          Respondent,  
                          v.  
Aileen McNally,  
                          Appellant.

Motion for leave to appeal dismissed  
upon the ground that the Court of  
Appeals does not have jurisdiction to  
entertain this motion for leave to  
appeal from the order of the Appellate  
Division entered in this action  
commenced in a Justice Court (see NY  
Const., art VI, § 3[b][7]; CPLR  
5602[a]).

3                    Mo. No. 2011-135  
In the Matter of Leon R. Koziol,  
a Suspended Attorney.  
  
Grievance Committee of the Fifth  
Judicial District,  
                          Respondent,  
Leon R. Koziol,  
                          Appellant.

Motion, insofar as it seeks leave to  
appeal from the February 2010 order of  
the Appellate Division, Fourth  
Department, dismissed as untimely (see  
CPLR 5513[b]); motion, insofar as it  
seeks leave to appeal from the  
September 2010 order of the Appellate  
Division, Third Department, denied.  
Motion for a stay dismissed as  
academic.  
Chief Judge Lippman took no part.



4                   Mo. No. 2011-226  
In the Matter of Michael A. Moon  
et al.,  
                  Appellants,  
                  v.  
Village of Brocton Zoning Board  
of Appeals et al.,  
                  Respondents.

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

4                   Mo. No. 2011-396  
The People &c.,  
                  Respondent,  
                  v.  
Michael Mungro,  
                  Appellant.

Motion for assignment of counsel  
granted and Charles J. Greenberg,  
Esq., PO Box 102, Buffalo, NY 14207-  
0102 assigned as counsel to the  
appellant on the appeal herein.

3                   Mo. No. 2011-261  
The People &c. ex rel. Albiso  
Muniz,  
                  Appellant,  
                  v.  
Mark Bradt, &c.,  
                  Respondent.

Motion for leave to appeal denied.

2                   Mo. No. 2011-255  
In the Matter of Jean  
Occhiogrosso, et al.,  
                  Appellants,  
                  v.  
New York State Office of Children  
and Family Services,  
et al.,  
                  Respondents.

Motion for reargument of motion for  
leave to appeal denied.

1                   Mo. No. 2011-351  
The People &c.,  
                  Respondent,  
                  v.  
Debra Pagan,  
                  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. 2011-199  
In the Matter of Jack P. et al.,  
&c.

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

Ulster County Department of  
Social Services,  
                          Respondent;  
Joi Q.,  
                          Appellant.

1                    Mo. No. 2011-225  
In the Matter of Joseph Benjamin  
P., &c.

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

Allen P.,  
                          Appellant,  
Administration for Children's  
Services,  
                          Respondent.

2                    Mo. No. 2011-378  
Joseph Perl, et al.,  
                          Appellants,  
                          v.  
Mehmood Meher, et al.,  
                          Respondents.

Motion by New Yorkers for Fair  
Automobile Insurance Reform 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  
24 copies filed within seven days.

2                    Mo. No. 2011-379  
Joseph Perl, et al.,  
                          Appellants,  
                          v.  
Mehmood Meher, et al.,  
                          Respondents.

Motion by New York State Trial Lawyers  
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 24 copies  
filed within seven days.

1                   Mo. No. 2011-196  
Jeremy S. Pitcock,  
                  Appellant,  
                  v.  
Kasowitz, Benson, Torres &  
Friedman, LLP, et al.,  
                  Respondents.

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

3                   Mo. No. 2011-253  
In the Matter of Karen  
Schoonmaker,  
                  Appellant,  
                  v.  
Capital Region Board of  
Cooperative Educational Services  
et al.,  
                  Respondents,  
et al.,  
                  Respondents.

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

2                   Mo. No. 2011-254  
Jean Spagnole,  
                  Appellant,  
                  v.  
Staten Island University  
Hospital, et al.,  
                  Respondents.

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

2                   Mo. No. 2011-197  
In the Matter of Heather Stern,  
                  Appellant,  
                  v.  
Randolph Hirsch, et al.,  
                  Respondents.

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

2                   Mo. No. 2011-180  
The People &c.,  
                  Respondent,  
                  v.  
Juan Vega,  
                  Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2011-405  
The People &c.,  
                    Respondent,  
                    v.  
Frederick E. Walker,  
                    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 dismissed as academic upon the ground that a Justice of the Appellate Division granted defendant leave to appeal by order dated April 14, 2011.

3                    Mo. No. 2011-243  
In the Matter of Susie M. Walker,  
&c., Deceased.  
  
Delanor A. Perry-Davis, &c.,  
                    Respondent;  
Tommy B. Walker,  
                    Appellant.

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

4                    Mo. No. 2011-160  
In the Matter of Imani D.W.  
  
Monroe County Department of Human  
Services,  
                    Respondent;  
Christine W.,  
                    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2011-165  
In the Matter of Brandy M. White,  
                    Respondent,  
                    v.  
Marc Cicerone,  
                    Appellant.  
(And Seven Other Related  
Proceedings.)

Motion for leave to appeal denied.

1 Mo. No. 2011-432

Yenem Corp.,  
Appellant,  
v.  
281 Broadway Holdings, et al.,  
Respondents,  
(And Other Actions.)

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Randall Co., LLC,  
Appellant,  
v.  
281 Broadway Holdings, et al.,  
Respondents,  
John Doe, et al.,  
Defendants.

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281 Broadway Holdings LLC, et  
al.,  
Third-Party Plaintiffs,  
v.  
Hunter-Atlantic, Inc.,  
Third-Party Respondent,  
et al.,  
Third-Party Defendants.

Motion by City of New York 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 24 copies filed within seven days.