

April 07, 2009

CASES

No. 30
John R. Consedine,
Respondent,
v.
Portville Central School District
et al.,
Appellants.

Order reversed, with costs, and
complaint dismissed.
Opinion by Judge Jones.
Judges Ciparick, Graffeo, Read, Smith
and Pigott concur.
Chief Judge Lippman took no part.

No. 37
The People &c.,
Respondent,
v.
Walkins Contreras,
Appellant.

Order affirmed.
Opinion by Judge Smith.
Judges Ciparick, Graffeo, Read, Pigott
and Jones concur.
Chief Judge Lippman took no part.

No. 35
The People &c.,
Respondent,
v.
Jose Fuentes,
Appellant.

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

No. 43
Norma Gorman, et al.,
Respondents,
v.
Town of Huntington,
Appellant.

Order reversed, with costs, defendant's
motion for summary judgment granted,
complaint dismissed and certified
question answered in the negative.
Opinion by Judge Pigott.
Judges Graffeo, Read and Jones concur.
Judge Ciparick dissents and votes to
modify in an opinion in which Chief
Judge Lippman concurs.
Judge Smith dissents separately in an
opinion.

No. 4

Grace Ruth Lucido, as
Administratrix of the Estate of
Thomas Lucido, Deceased,
Respondent,

v.

Mary Mancuso,
Defendant,
Greenburgh Partnership No. 26 et
al.,

Third-Party
Respondents,
Delcon Construction Corporation,
Third-Party
Appellant.

Appeal withdrawn pursuant to
stipulation of the parties.

No. 44

M&B Joint Venture, Inc.,
Respondent,

v.

Laurus Master Fund, Ltd., et al.,
Appellants,
Newman & Newman, P.C., et al.,
Defendants.

Order modified, with costs to
defendants Laurus Master Fund, Ltd.,
Laurus Master Fund, Ltd., as agent, and
14-16 East 67th Street Holding Corp.,
by granting the motions to dismiss the
complaint as against them in the
entirety and to cancel the notice of
pendency and, as so modified, affirmed,
and certified question answered in the
negative, in a memorandum.
Judges Ciparick, Graffeo, Read, Smith,
Pigott and Jones concur.
Chief Judge Lippman took no part.

MOTIONS

Mo. No. 2009-212
In the Matter of Prince T.
Alarape,

Appellant,

v.

New York City Department of
Housing Preservation and
Development (HPD), et al.,
Respondents.

Motion for leave to appeal denied.
Motion for a stay dismissed as
academic.

Chief Judge Lippman took no part.

Mo. No. 2009-216

Debra Anduaga,

Appellant,

v.

AHRC NYC New Projects, Inc.,
Respondent.

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

Mo. No. 2009-121

The People &c.,

Respondent,

v.

Andrew Ashby,

Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-282

The People &c.,

Respondent,

v.

Herman Barrier, &c.,

Appellant.

Motion for leave to appeal denied.

SSD 12

In the Matter of Thomas Bell,
Appellant,
v.
Richard A. Brown,
Respondent.

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 (CPLR 5601).

Mo. No. 2009-228

The People &c.,
Respondent,
v.
William Billups, also known as
Muhammad Haqq,
Appellant.

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

SSD 13

In the Matter of Winford Kent
Bishop, an attorney and
counselor-at-law.

Departmental Disciplinary
Committee for the First Judicial
Department,
Respondent,
v.
Winford Kent Bishop,
Appellant.

Appeal, insofar as taken from the Appellate Division order denying reargument or, in the alternative, 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 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.
Chief Judge Lippman took no part.

Mo. No. 2009-140

In the Matter of Reginald Brower,
Appellant,
v.
George Alexander, &c.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-207
In the Matter of Chris Burch,
et al.,
 Appellants,
 v.
Brian L. Harper, &c., et al.,
 Respondents.

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

Mo. No. 2009-185
In the Matter of Aisha C., &c.

Eleanor C.,
 Appellant.
Leake & Watts Services, Inc.,
 Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-94
The People &c.,
 Respondent,
 v.
Joseph Cooke,
 Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-191
In the Matter of Pasquale D.
Coviello, &c. (deceased).

Michele Okin,
 Appellant;
Isabel Cristina Coviello, et al.,
 Respondents.

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

Mo. No. 2009-164
In the Matter of Michaela B.D.

Gordan A.S. and Ramona A.S.,
 Respondents;
Arthur F.M.,
 Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-198
Rachel Djeddah,
Appellant,
v.
Richard Djeddah,
Respondent.

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.

Mo. No. 2009-231
In the Matter of East Fishkill
Home & Land Company, LLC, et al.,
Appellants,
v.
Town of East Fishkill, et al.,
Respondents.

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

Mo. No. 2009-304
In the Matter of East Fishkill
Home & Land Company, LLC, et al.,
Appellants,
v.
Town of East Fishkill, et al.,
Respondents.

Motion by Dutchess County for leave to file a brief amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

Mo. No. 2009-202
George Eagan Ginther,
Appellant,
v.
Howard S. Rosenhoch, Esq. et al.,
Respondents.

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

Mo. No. 2009-211
Glacial Aggregates LLC,
Appellant,
v.
Town of Yorkshire,
Respondent.

Motion for leave to appeal denied as unnecessary.

Mo. No. 2009-369
Glacial Aggregates LLC,
Appellant,
v.
Town of Yorkshire,
Respondent.

Motion by New York Construction Materials Association, Inc. for leave to file a brief amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed, and for leave to file a brief amicus curiae on the appeal herein granted, three copies of the brief to be served and an original and 24 copies filed within 30 days.

Mo. No. 2009-205
Simpson Gray,
Appellant,
v.
City of New York, et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as affirmed Supreme Court's grant of the motion to amend the answer, dismissed upon the ground that such part of the order does not finally determine the action within the meaning of the Constitution (see Best v Yutaka, 90 NY2d 833, at 834 n [1997]; Muro v Bay Ready Mix & Supplies, Inc., 97 NY2d 625 [2001]); motion for leave to appeal otherwise denied.

Mo. No. 2009-173
Dr. Alex Greenberg, DDS, PC
et al.,
Respondents,
v.
SNA Consultants, Inc. et al.,
Appellants.

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

Mo. No. 2009-111
In the Matter of Greenwich House
Holding Corp.,
Appellant,
v.
New York City Water Board,
et al.,
Respondents.

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

Mo. No. 2009-168
Sidney Hirschfeld, Director,
Mental Hygiene Legal Service,
&c.,
Appellant,
v.
Mitchell Teller, &c., et al.,
Respondents.

Motion for leave to appeal granted.

Mo. No. 2009-151
The People &c.,
Respondent,
v.
Carl Johnson,
Appellant.

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

Mo. No. 2009-135
George Kralik, et al.,
Respondents,
v.
239 East 79th Street Owners
Corp.,
Appellant.

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.

Mo. No. 2009-208
George Kralik, et al.,
Respondents,
v.
239 East 79th Street Owners
Corp.,
Appellant.

Motion by Council of New York
Cooperatives and Condominiums for
leave to file a brief amicus curiae on
the motion for leave to appeal herein
granted and the brief is accepted as
filed.

Mo. No. 2009-273
In the Matter of Seandell L.
et al.

Motion for leave to appeal denied.

Monroe County Department of Human
and Health Services,
Respondent;
Shantele L.,
Appellant.

Mo. No. 2009-261
Leeward Isles Resorts, Limited,
Respondent,
v.
Charles C. Hickox,
Appellant.

Motion for reargument of motion for
leave to appeal denied. Movant was
not precluded by CPLR 5511 from
seeking leave to appeal from the final
April 2008 Supreme Court judgment to
bring up for review the prior nonfinal
Appellate Division order by which he
is aggrieved. That Supreme Court's
final judgment was entered without
opposition did not here constitute a
waiver of the right to move for leave
to appeal from that paper under CPLR
5602(a)(1)(ii) (see Paramount
Communications, Inc. v Gibraltar Cas.
Co., 90 NY2d 507, 513 [1997]).
Chief Judge Lippman took no part.

Mo. No. 2009-192
The People &c.,
Respondent,
v.
Keenan Leung,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-163
Ronald I. Levine, &c.,
Respondent,
v.
Catskill Regional Off-Track
Betting Corporation,
Appellant.

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.

Mo. No. 2009-253
In the Matter of Shahida M.
et al.

Motion for leave to appeal denied.

Erie County Department of Social
Services,
Respondent;
Tiffany W.,
Appellant.

Mo. No. 2009-147
McMahan Securities Co. L.P.,
Appellant,
v.
Aviator Master Fund, Ltd.,
et al.,
Respondents.

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

Mo. No. 2009-245
Monique Concool Mendelson,
Appellant,
v.
Empire Associates Realty Co.
Assn., &c.,
Respondent.

Motion for leave to appeal denied with
one hundred dollars costs and
necessary reproduction disbursements.
Chief Judge Lippman took no part.

Mo. No. 2009-136
In the Matter of The City of New
York,
Appellant,
v.
The Patrolmen's Benevolent
Association of the City of New
York, Inc., et al.,
Respondents.

Motion for leave to appeal granted.
Chief Judge Lippman took no part.

SSD 14
Melissa B. O'Halloran
Respondent,
v.
John V. O'Halloran,
Appellant.

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.

Mo. No. 2009-260
Mynor Orellana,
Respondent,
v.
Dutcher Avenue Builders Inc.,
Respondent,
Ellen Meagher et al.,
Appellants.
(And a Third-Party Action.)

Motion for leave to appeal, insofar as
made by Christopher Meagher, dismissed
upon the ground that he is not a party
aggrieved as the complaint has been
dismissed against him; motion for
leave to appeal, insofar as made by
Ellen Meagher, dismissed upon the
ground that as to her the order sought
to be appealed from does not finally
determine the action within the
meaning of the Constitution.

Mo. No. 2009-110
In the Matter of Ved Parkash,
Appellant,
v.
New York City Water Board,
et al.,
Respondents.

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

Mo. No. 2009-373
In the Matter of Tayseer Razik,
et al.,
Appellants,
v.
New York State Department of
State Division of Licensing
Services,
Respondent.

Motion for leave to appeal denied.
Motion for a stay dismissed as
academic.

Mo. No. 2009-82
In the Matter of John Richard,
Appellant,
v.
Thomas Poole, &c.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-109
In the Matter of SB&W Realty
Corp.,
Appellant,
v.
New York City Water Board,
et al.,
Respondents.

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

Mo. No. 2009-201
Martin A. Schwartz,
Respondent,
v.
Matthew J. Pierce, Doing Business
As Pierce Excavating & Services,
Appellant.

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

Matthew J. Pierce, Doing Business
As Pierce Excavating & Services,
Third-Party Appellant,
v.
Route 28 Self-Storage, Inc.,
Third-Party Respondent.

Mo. No. 2009-165
In the Matter of St. Lawrence
County Support Collection Unit,
on Behalf of Jennifer M. Gooshaw,
Respondent,
v.
John P. Cook,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-167
In the Matter of St. Lawrence
County Support Collection Unit,
on Behalf of Crystal Murray,
Respondent,
v.
John P. Cook,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-166
In the Matter of St. Lawrence
County Support Collection Unit,
on Behalf of Sarah R. Paquin,
Respondent,
v.
John P. Cook,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-240
Staten Island Emergency
Physicians, P.C.,
Appellant,
v.
Staten Island University
Hospital,
Respondent.

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

Mo. No. 2009-99
In the Matter of Dexter Stinson,
Appellant,
v.
Westchester Health Care
Corporation et al.,
Respondents.

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

Mo. No. 2009-9
Marek Szpakowski et al.,
Respondents,
v.
Shelby Realty, LLC,
Respondent-Appellant,
Forthright Development Company,
LLC,
Appellant-Respondent,
Metropolitan Hotels, LLC,
Defendant.
(And a Third-Party Action.)

Motions for leave to appeal denied.
Chief Judge Lippman took no part.

Mo. No. 2009-218
In the Matter of Charles C.
Vanderminden,
Appellant,
v.
Richard P. Tarantino, &c.,
et al.,
Respondents.

Motion for leave to appeal denied.

Mo. No. 2009-119
Nicole Paige Vereczkey, &c.,
Respondent,
v.
Jamshid Sheik, &c., et al.,
Defendants,
Harbor Plumbing and Heating
Supply, LLC, et al.,
Respondents,
Rheem Manufacturing Company
et al.,
Appellants.
(And a Third-Party Action.)

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.

Mo. No. 2009-235
Arline Wecker,
Appellant,
v.
Rachel Franco, et al.,
Respondents.

Motion for leave to appeal denied.

Mo. No. 2009-190
In the Matter of West Harlem
Business Group,
Respondent,
v.
Empire State Development
Corporation,
Appellant.

Motion for leave to appeal granted.
Chief Judge Lippman took no part.