

June 09, 2009

CASES

4 No. 81
Jiovon Anonymous, a Minor by and
Through his Father and Legal
Guardian, Thomas Anonymous, &
Thomas Anonymous, Individually,
 Respondents,
 v.
City of Rochester, Robert Duffy,
in his official capacity as Mayor
of City of Rochester, and David
Moore, in his official capacity
as Chief of Police of City of
Rochester,
 Appellants.

Order affirmed, without costs.
Opinion by Judge Jones.
Chief Judge Lippman and Judges Ciparick
and Read concur.
Judge Graffeo concurs in result in an
opinion.
Judge Pigott dissents in an opinion in
which Judge Smith concurs.

1 No. 95
The People &c.,
 Respondent,
 v.
Dzemil Balic,
 Appellant.

Order affirmed, without costs.
Opinion by Judge Graffeo.
Judges Ciparick, Read, Smith, Pigott
and Jones concur.
Chief Judge Lippman took no part.

2 No. 91
Severino Cunha et al.,
 Plaintiffs,
 v.
City of New York,
 Defendant.

City of New York,
 Third-Party Respondent,
 v.
Haks Engineers, P.C.,
 Third-Party Appellant.

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

2 No. 102
The People &c.,
 Respondent,
 v.
Wayne Decker,
 Appellant.

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

3 No. 103
Donna M. Lang,
 Respondent,
 v.
James P. Newman et al.,
 Defendants,
Russell J. Firman,
 Appellant.

Order affirmed, with costs, in a
memorandum.
Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

2 No. 94
The People &c.,
 Respondent,
 v.
Tyrone Mingo,
 Appellant.

Order reversed, without costs, and case
remitted to Supreme Court, Kings
County, for further proceedings in
accordance with the opinion herein.
Opinion by Judge Graffeo.
Judges Ciparick, Read, Smith, Pigott
and Jones concur.
Chief Judge Lippman took no part.

 No. 92
City of New York,
 Appellant,
 v.
Smokes-Spirits.Com, Inc., et al.,
 Respondents,
Joyce E. Houle, et al.,
 Defendants.
(And Other Actions.)

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 questions answered in the
negative.
Opinion by Judge Ciparick.
Chief Judge Lippman and Judges Graffeo,
Read, Smith, Pigott and Jones concur.

2 No. 100
Melanie Petrone,
 Respondent,
 v.
Bernard Fernandez,
 Defendant,
James McCloy,
 Appellant.

Order, insofar as appealed from,
reversed, with costs, that part of
Supreme Court's order that dismissed
the second cause of action against
defendant James McCloy reinstated and
certified question answered in the
negative.

Opinion by Judge Read.
Chief Judge Lippman and Judges
Ciparick, Graffeo and Jones concur.
Judge Pigott concurs in result in an
opinion in which Judge Smith concurs.

MOTIONS

1 Mo. No. 2009-436
Amir Tawfiyq Abdul-Aziz,
 Appellant,
 v.
The City of New York,
 Respondent.

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

3 Mo. No. 2009-441
In the Matter of Ryan Adams,
 Respondent,
 v.
Alecia Bracci,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2009-426
Adventure Trails, Inc.,
 Appellant,
 v.
Leading the Way Tours, Inc.
et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution; motion, insofar as it seeks leave to appeal from the Appellate Division order dismissing the appeal to that Court, dismissed as untimely (see CPLR 5513[b]; Eaton v State of New York, 76 NY2d 824 [1990]).

1 Mo. No. 2009-244
American Standard, Inc.,
 Respondent,
 v.
Oakfabco, Inc., formerly known as
Kewanee Boiler Corp.,
 Appellant.

Motion for leave to appeal granted.

1 Mo. No. 2009-431
In the Matter of Charla Bikman,
&c.,
 Respondent,
 v.
New York City Loft Board,
 Appellant.

Motion for leave to appeal granted.

2 Mo. No. 2009-427
The People &c.,
 Respondent,
 v.
Robert Brown,
 Appellant.

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

3 Mo. No. 2009-437
Frank Buonanotte, et al.,
 Appellants,
 v.
New York State Office of
Alcoholism and Substance Abuse
Services, et al.,
 Respondents.

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

1 SSD 29
The State of New York ex rel.
Barbara D.,
 Appellant,
 v.
Francis D.,
 Respondent.

Francis D.,
 Respondent,
 v.
Barbara D.,
 Appellant.

Appeal, insofar as taken in the habeas
corpus proceeding, dismissed without
costs, by the Court sua sponte, upon
the ground that no substantial
constitutional question is directly
involved and the two-justice dissent
at the Appellate Division does not
pertain to that proceeding; appeal,
insofar as taken in the matrimonial
action, dismissed without costs, by
the Court sua sponte, upon the ground
that the Appellate Division order does
not finally determine the action
within the meaning of the
Constitution.

4 Mo. No. 2009-390
In the Matter of Rinaldo Del
Gallo, III,
 Appellant,
 v.
Yulea Del Gallo,
 Respondent.

Motion, insofar as it seeks leave to
appeal as against the Law Guardian,
dismissed as untimely (see CPLR
5513[b]); motion, insofar as it seeks
leave to appeal as against Yulea Del
Gallo, denied.
Motion for poor person relief
dismissed as academic.

1 Mo. No. 2009-454
Juan Diaz,
 Appellant,
 v.
New York City Health and
Hospitals Corporation,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2009-484
Rowland Gureje,
 Appellant,
 v.
Jasmine Richardson, et al.,
 Respondents.

Motion for leave to appeal dismissed
as untimely (see CPLR 5513[b]; Eaton v
State of New York, 76 NY2d 824
[1990]).

2 Mo. No. 2009-452
Glenn Heckel,
 Appellant,
 v.
City of New York,
 Respondent.

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

3 Mo. No. 2009-449
In the Matter of a Trust Created
by Charlotte P. Hyde, Deceased.
Glens Falls National Bank and
Trust Company et al., &c.,
 Respondents;
Carol J. Whitney, as Executor of
the Estate of Louis H. Whitney,
Deceased, et al.,
 Respondents;
Mary W. Renz, et al.,
 Appellants.
(And Another Proceeding.)

Motion for leave to appeal granted.

2 Mo. No. 2009-435
In the Matter of Roy J. Lester,
 Appellant,
 v.
New York State Office of Parks,
Recreation & Historic
Preservation, et al.,
 Respondents.

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

4 Mo. No. 2009-470
In the Matter of Joshua M.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2009-451
Leyda Mata, &c., et al.,
 Appellants,
 v.
Huntington Union Free School
District, &c.,
 Respondent.

Motion for leave to appeal denied.

2 SSD 28
In the Matter of Mill River Club,
Inc.,
 Appellant,
 v.
New York State Division of Human
Rights, 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. 2009-467
In the Matter of Theresa Mooring,
 Appellant,
 v.
American Airlines et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

Motion for reargument of motion for
leave to appeal denied.

2 Mo. No. 2009-402
State of New York,
 Respondent,
 v.
LVF Realty Co., Inc., et al.,
 Respondents,
Sunoco, Inc. (R&M),
 Appellant.

Motion for leave to appeal denied upon
the ground that an appeal lies as of
right.

2 Mo. No. 2009-399
Jolanta Ostrowska,
 Respondent,
 v.
Bogdan Ostrowski,
 Appellant.

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

1 Mo. No. 2009-444
Philips South Beach, LLC,
 Appellant,
 v.
ZC Specialty Insurance Company,
 Respondent.

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

4 Mo. No. 2009-442
The People &c. ex rel. Bernard
Pitts,
 Appellant,
 v.
David Unger, &c.,
 Respondent.

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

3 Mo. No. 2009-459
In the Matter of Progressive
Northeastern Insurance Company,
as Subrogee of Julie J. Taddeo,
 Respondent,
New York State Insurance Fund,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2009-439
In the Matter of Vanessa R.
(Anonymous).

Jesus Berrios,
 Appellant;
Mental Hygiene Legal Services, on
behalf of Vanessa R.,
 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 (see
McDermott v Manhattan Eye, Ear &
Throat Hosp., 15 NY2d 20, 23 n 2
[1964]).
Motion for poor person relief
dismissed as academic.

3 Mo. No. 2009-465
The People &c. ex rel. Rodney
Rush,
 Appellant,
 v.
Joseph T. Smith, &c.,
 Respondent.

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

3 Mo. No. 2009-31
In the Matter of the Foreclosure
of Tax Liens by County of
Sullivan.

County of Sullivan,
 Respondent;
ABC Pacific Realty, LLC,
 Appellant.

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

3 Mo. No. 2009-318
In the Matter of David S. Vetter,
 Appellant,
 v.
Board of Education, Ravenna-
Coeymans-Selkirk Central School
District, et al.,
 Respondents.

Motion for leave to appeal granted.

3 SSD 30
In the Matter of Quincy Wade,
 Appellant,
 v.
Dale Artus, as Superintendent of
Clinton Correctional Facility,
et al.,
 Respondents.

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

4 Mo. No. 2009-376
Stephen E. Webster,
 Appellant,
 v.
Total Identity Corporation,
et al.,
 Defendants,
Leslie W. Kernan, Jr. et al.,
 Respondents.

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

1 Mo. No. 2009-421
In the Matter of Carl Wells,
 Appellant,
 v.
Hon. Gregory Carro, &c.,
 Respondent.

On the Court's own motion, appeal
dismissed, without costs, upon the
ground that no substantial
constitutional question is directly
involved.
Motion for leave to appeal denied.
Motion for poor person relief
dismissed as academic.

1 Mo. No. 2009-425
Wells Fargo Bank, N.A., &c.,
 Appellant,
 v.
Zurich American Insurance
Company, &c., et al.,
 Respondents.

Motion for leave to appeal denied.