

State of New York
Court of Appeals

Decisions

October 20, 2022

CASES

1 No. 77
The People &c.,
 Respondent,
 v.
Donnell Baines,
 Appellant.

Order modified in accordance with the opinion herein and, as so modified, affirmed.
Opinion by Judge Troutman.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson and Singas concur.

1 No. 79
The People &c.,
 Respondent,
 v.
Rakeem Douglas,
 Appellant.

Reargument ordered for a future Court session.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

3 No. 73
In the Matter of Independent Insurance
Agents and Brokers of New York, Inc., et al.,
 Respondents,
et al.,
 Petitioners,
 v.
New York State Department of Financial
Services et al.,
 Appellants.

Order reversed, with costs, and judgment of Supreme Court, Albany County, reinstated.
Opinion by Judge Singas.
Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson and Troutman concur.

1 No. 72
The People &c.,
 Respondent,
 v.
Hasahn D. Murray,
 Appellant.

Order reversed and a new trial ordered.
Opinion by Judge Garcia.
Acting Chief Judge Cannataro and Judges Rivera, Wilson, Singas and Troutman concur.

No. 104
Andrew Nitkewicz, &c.,
Appellant,
v.
Lincoln Life & Annuity Company of New
York,
Respondent.

Certification of question by the United States Court
of Appeals for the Second Circuit, pursuant to section
500.27 of this Court's Rules of Practice, accepted and
the issue presented is to be considered after briefing
and argument.
Acting Chief Judge Cannataro and Judges Rivera,
Garcia, Wilson, Singas and Troutman concur.

1 No. 75
Sage Systems, Inc.,
Respondent,
v.
Michael Liss, &c.,
Appellant.

Order reversed, with costs, plaintiff's motion for
summary judgment denied and defendant's motion
for summary judgment dismissing the complaint
granted.
Opinion by Judge Rivera.
Acting Chief Judge Cannataro and Judges Garcia,
Wilson, Singas and Troutman concur.

MOTIONS

4 Mo. No. 2022-528
In the Matter of Nyiboul M. Akol,
Respondent,
v.
Makor Afet,
Appellant.

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

1 Mo. No. 2022-521
The People of the State of New York, by
Letitia James, &c.,
Respondent,
v.
Laurence G. Allen et al.,
Appellants,
NYPPEX, LLC, et al.,
Appellants.

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 with one hundred
dollars costs and necessary reproduction
disbursements.

1 Mo. No. 2022-522
The People of the State of New York, by
Letitia James, &c.,
Respondent,
v.
Laurence G. Allen et al.,
Appellants,
NYPPEX, LLC, et al.,
Appellants.

Motion by Limited Partners Advisory Committee for
ACP X, LP for leave to appear amicus curiae on the
motion for leave to appeal herein denied.

1 Mo. No. 2022-588
The People of the State of New York, by
Letitia James, &c.,
Respondent,
v.
Laurence G. Allen et al.,
Appellants,
NYPPEX, LLC, et al.,
Appellants.

Motion for a stay dismissed as academic.

4 Mo. No. 2022-540
In the Matter of Melinda Byler,
Appellant,
v.
Kenneth Byler et al.,
Respondents.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Judge Troutman took no part.

1 Mo. No. 2022-691
The People &c.,
Respondent,
v.
Ramon Cabrera,
Appellant.

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

1 Mo. No. 2022-688
Kathryn Casey, et al.,
Respondents,
Pamela Renna et al.,
Plaintiffs-Intervenors,
v.
Whitehouse Estates, Inc., et al.,
Appellants.

Motion by Rent Stabilization Association of NYC, Inc. 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

Whitehouse Estates, Inc., et al.,
Third-Party Appellants,
v.
Roberta L. Koepfel, et al.,
Third-Party Defendants.

3 Mo. No. 2022-451
Barbara U. Collyer et al.,
Appellants,
v.
Danielle M. LaVigne,
Respondent,
et al.,
Defendants,
New York Central Mutual Fire Insurance
Company,
Respondent.

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

1 Mo. No. 2022-201
In the Matter of Wayne F. Crowe, &c.

Attorney Grievance Committee for the First
Judicial Department,
Respondent;
Wayne F. Crowe,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-476
The People &c.,
Respondent,
v.
Etzer Edmee,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-467
The People &c.,
Respondent,
v.
William Feliciano,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-496
In the Matter of Brandy Fowler,
Respondent,
v.
Eric Fowler,
Appellant.

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.

2 Mo. No. 2022-562
In the Matter of Duane Green,
Appellant,
v.
Tameka Palmer,
Respondent.

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

1 Mo. No. 2022-712
In the Matter of Celinette H.H.,
 Appellant,
 v.
Michelle R. et al.,
 Respondents.

Motion for poor person relief granted.

3 Mo. No. 2022-475
The People &c.,
 Respondent,
 v.
Stephen Huether,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-713
James B. Nutter & Company,
 Appellant,
 v.
County of Saratoga et al.,
 Respondents,
et al.,
 Defendants.

Motion by Pacific Legal Foundation 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. 2022-672
The People &c.,
 Respondent,
 v.
Tyquan Johnson,
 Appellant.

Motion for assignment of counsel granted and Paul B. Watkins, Esq., 115 North Main Street, Fairport, NY 14450 assigned as counsel to the appellant on the appeal herein.

SSD 35
Donald C. Karn, Jr.,
 Appellant,
 v.
State of New York,
 Respondent.
(Claim No. 137016)

Appeal transferred without costs, by the Court *sua sponte*, to the Appellate Division, Third 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]).

SSD 36
Donald C. Karn, Jr.,
Appellant,
v.
State of New York,
Respondent.
(Claim No. 137015)

Appeal transferred without costs, by the Court *sua sponte*, to the Appellate Division, Third 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]).

1 Mo. No. 2022-481
Kenyon & Kenyon LLP,
Appellant,
v.
SightSound Technology, LLC, et al.,
Respondents.

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

4 SSD 37
In the Matter of Peter Lang et al.,
Respondents,
v.
Brittaney Lang et al.,
Appellants.

In the Matter of Peter Lang, et al.,
Respondents,
v.
Brittaney M. Lang,
Appellant,
et al.,
Respondent.

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

4 Mo. No. 2022-514
In the Matter of Mark M., &c.,
Appellant,
v.
State of New York, et al.,
Respondents.

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

2 SSD 38
Faye T. Madigan, &c.,
Appellant,
v.
Berkeley Capital LLC, et al.,
Defendants,
Rosa Bronstein, et al.,
Respondents,
Oceana Holding Corp.,
Respondent.

Appeal, insofar as taken by Faye T. Madigan from so much of the Appellate Division order as granted that branch of the motion to hold plaintiff's counsel in criminal contempt, dismissed without costs, by the Court *sua sponte*, upon the ground that she is not a party aggrieved (*see* CPLR 5511); appeal otherwise dismissed without costs, by the Court *sua sponte*, upon the ground that the remaining portion of the order does not finally determine the action within the meaning of the Constitution.

4 Mo. No. 2022-673
The People &c.,
Respondent,
v.
Farod Mosley,
Appellant.

Motion for assignment of counsel granted and Philip Rothschild, Esq., Hiscock Legal Aid Society, 51 South Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2022-487
Mutual Aid Association of the Paid Fire
Department of the City of Yonkers, New
York, Inc., &c.,
Appellant,
v.
City of Yonkers, et al.,
Respondents,
et al.,
Defendants.

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

3 Mo. No. 2022-466
In the Matter of Joshua PP.,
Appellant,
v.
Danielle PP.,
Respondent.
(And Other Related Proceedings.)

Motion for leave to appeal denied.

2 Mo. No. 2022-433
In the Matter of State of New York,
 Respondent,
 v.
Christian R.,
 Appellant.

1 Mo. No. 2022-484
In the Matter of Juan Ramirez, Jr.,
 Appellant,
 v.
Selective Advisors Group, LLC,
 Respondent.

Motion for leave to appeal denied.

On the Court's own motion, appeal, insofar as taken from the May 2022 Appellate Division order, dismissed, without costs, upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; appeal, insofar as taken from the February 2022 Appellate Division order, dismissed, without costs, 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 (*see* CPLR 5601).
Motion, insofar as it seeks leave to appeal from the May 2022 Appellate Division order, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.

4 SSD 39
Irene Richards, &c.,
 Respondent,
 v.
Hedman Resources Limited,
 Appellant,
et al.,
 Defendants.

David D. Laures et al.,
 Respondents,
 v.
Air & Liquid Systems Corporation, et al.,
 Defendants,
Hedman Resources Limited,
 Appellant.

Roger J. Adamek, &c.,
 Respondent,
 v.
Hedman Resources Limited,
 Appellant,
et al.,
 Defendants.

3 Mo. No. 2022-690
The People &c.,
 Respondent,
 v.
Storm N. Rivera,
 Appellant.

2 Mo. No. 2022-744
The People &c.,
 Respondent,
 v.
Lance Rodriguez,
 Appellant.

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

Motion for assignment of counsel granted and Kelly L. Egan, Esq., The Rural Law Center of New York, 1528 Columbia Turnpike, Castleton, NY 12033, assigned as counsel to the appellant on the appeal herein.

Motion by Alice Ristroph, 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 Mo. No. 2022-749
The People &c.,
 Respondent,
 v.
Lance Rodriguez,
 Appellant.

Motion by Transportation Alternatives, 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 SSD 40
Roger Rowe,
 Appellant,
 v.
U.S. Bank National Association, &c., et al.,
 Respondents,
et al.,
 Defendants.

Appeal, insofar as deemed taken from so much of the April 2022 Appellate Division order as resolved the appeal from the May 2021 Supreme Court order, dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies as of right from the unanimous Appellate Division order absent the direct involvement of a substantial constitutional question (*see* CPLR 5601); appeal otherwise dismissed without costs, by the Court *sua sponte*, upon the ground that the July 2022 order appealed from does not finally determine the action within the meaning of the Constitution.

4 Mo. No. 2022-494
In the Matter of Steven L. Schunk et al.,
 Appellants,
 v.
Town of York et al.,
 Respondents.

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

4 Mo. No. 2022-482
In the Matter of Andrew Searles,
 Appellant,
 v.
Sheila J. Poole, &c., et al.,
 Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2022-610
In the Matter of Erin M. Shepherd,
Appellant,
v.
Thad A. Shepherd, Jr.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2022-733
The People &c.,
Respondent,
v.
Daniel Talluto,
Appellant.

Motion by The Legal Aid Society et al. for leave to file a brief amici 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.

2 Mo. No. 2022-469
The People &c.,
Respondent,
v.
Hector Torres,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-539
In the Matter of Elvin Trejo,
Respondent,
v.
Ingrid Pavon,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

2 Mo. No. 2022-681
The People &c.,
Respondent,
v.
Peter J. Troy,
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.
Judge Singas took no part.

1 Mo. No. 2022-491
Brian Bernard Tuohy,
 Appellant,
 v.
Kiyoe Sato,
 Respondent.
(And Two Other Actions.)

Motion, insofar as it seeks leave to appeal from (1) the May 2022 Appellate Division order and (2) those portions of the April 2022 Appellate Division order as dismissed appeals from (i) so much of the January 2021 order as denied the motion to vacate the September 2020 judgment, (ii) the March 2020 order, and (iii) the December 2020 order, dismissed upon the ground that such order and portions of the order do not finally determine the actions within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for a stay dismissed as academic.
Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain the motion (*see* NY Const, art VI, § 3).

2 Mo. No. 2022-498
In the Matter of Grace E. W.-F.

New York Foundling Hospital,
 Appellant;
Zanovia W.,
 Respondent,
et al.,
 Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

4 Mo. No. 2022-584
In the Matter of Chad Washington,
 Appellant,
 v.
Elmore Davis,
 Respondent.

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

4 Mo. No. 2022-411
Susan M. Weichert et al.,
 Appellants,
 v.
Randy Charbonneau,
 Respondent,
et al.,
 Defendant.

Motion for leave to appeal denied.

3 Mo. No. 2022-493
Wendell C. Williams,
 Respondent,
 v.
Phyllis Scafidi,
 Appellant.

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