SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT

MAY 14, 2019

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Friedman, J.P., Kapnick, Gesmer, Oing, Moulton, JJ.

8141 The People of the State of New York, Ind. 3563/10
Respondent,

-against-

Julian Kurita,
Defendant-Appellant.

_____

Christina A. Swarns, Office of the Appellate Defender, New York (Anastasia Heeger of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Alexander Michaels of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Charles H. Solomon, J.), rendered July 10, 2012, convicting defendant, after a jury trial, of murder in the second degree, and sentencing him to a term of 15 years to life, unanimously affirmed.

The verdict was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348-49 [2007]). There is no basis for disturbing the jury's rejection, after considering conflicting expert testimony, of defendant's insanity defense. Defendant did not prove, by a preponderance of the evidence, that he lacked substantial capacity to appreciate that the act of

killing the victim was morally wrong (*see* Penal Law § 40.15).

Defendant received effective assistance under the state and federal standards (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]). Defendant's ineffective assistance claim is based on his attorney's lack of objection to various portions of the prosecutor's summation. However, defendant has not shown that the absence of objections fell below an objective standard of reasonableness, or that they deprived defendant of a fair trial or affected the outcome of the case. The remarks at issue generally constituted permissible comment on the evidence, including reasonable inferences to be drawn therefrom, and where the summation arguably went beyond the evidence, this was not so egregious as to deprive defendant of a fair trial (*see People v Overlee*, 236 AD2d 133 [1997], *lv denied* 91 NY2d 976 [1998]; *People v D'Alessandro*, 184 AD2d 114, 118-119 [1992], *lv denied* 81 NY2d 884 [1993]). To the extent defendant's argument may be viewed as seeking reversal in the interest of

justice based on concededly unpreserved errors, we decline to extend such relief.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Acosta, P.J., Manzanet-Daniels, Kapnick, Kahn, Oing, JJ.

8696 Keren Ben-Horn, et al., Index 155256/14
Plaintiffs-Respondents,

-against-

Coso 120 West 105, LLC,
Defendant-Appellant.

_____

An appeal having been taken to this Court by the above-named appellant from an order of the Supreme Court, New York County (Jennifer G. Schecter, J.), entered on or about June 13, 2018,

And said appeal having been argued by counsel for the respective parties; and due deliberation having been had thereon, and upon the stipulation of the parties hereto dated April 22, 2019,

It is unanimously ordered that said appeal be and the same is hereby withdrawn in accordance with the terms of the aforesaid stipulation.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9294-
9295-
9296-
9297 Ind. 815/10

The People of the State of New York,
Respondent,

-against-

Timothy Newman,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (Robin Nichinsky of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Matthew B. White of counsel), for respondent.

_____

Judgment, Supreme Court, Supreme Court, Bronx County (Margaret L. Clancy, J.), rendered July 23, 2013, convicting defendant, after a jury trial, of assault in the first degree, and sentencing him, as a persistent violent felony offender, to a prison term of twenty years to life, unanimously affirmed.

The verdict was based on legally sufficient evidence and was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the jury's credibility determinations. The jury could have reasonably concluded that the victim's serious neck wound could only have been caused by a knife or other dangerous sharp object. Given that defendant cut the victim's neck, the inference that he

did so with the intent to cause, at least, serious physical injury is inescapable (*see generally People v Getch*, 50 NY2d 456, 465 [1980]).

Defendant's challenges to the People's summation are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we find that the challenged remarks generally constituted fair comment on the evidence, and reasonable inferences to be drawn therefrom, in response to defense arguments, and that the summation did not deprive defendant of a fair trial (*see People v Overlee*, 236 AD2d 133 [1st Dept 1997], *lv denied* 91 NY2d 976 [1998]; *People v D'Alessandro*, 184 AD2d 114, 118-120 [1st Dept 1992], *lv denied* 81 NY2d 884 [1993]). We have considered and rejected defendant's ineffective assistance of counsel claims (*see People v Speaks*, 28 NY3d 990, 992 [2016]; *see also Strickland v Washington*, 466 US 668 [1984]).

The court properly denied, without a hearing, defendant's CPL 330.30(2) motion to set aside the verdict based on alleged juror misconduct. Although a "verdict may not be impeached by probes into the jury's deliberative process" (*People v Maragh*, 94 NY2d 569, 573 [2000]), a narrow exception exists for "statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and

resulting verdict" (*Peña-Rodriguez v Colorado*, ___ US ___, 137 S Ct 855, 869 [2017]; *see also People v Leonti*, 262 NY 256 [1933]). However, viewed in context, one juror's remarks during deliberations about his general awareness of conflicts between "African Americans" (defendant's ethnicity) and "Jamaicans" or "Caribbeans" (the victim's ethnicity) did not rise to the level of overt bias against or in favor of either group, nor did they "tend to show that racial animus was a significant motivating factor in the juror's vote to convict" (*Peña-Rodriguez*, 137 S Ct at 869). Defendant's remaining claims regarding jury deliberations are barred by the no-impeachment rule.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9298-
9298A Kiera Lewis,
Plaintiff-Respondent,

-against-

Joseph N. Revello, Jr.,
Defendant-Appellant.

Index 150842/16E

_____

Kelly, Rode & Kelly, LLP, Mineola (Eric P. Tosca of counsel), for appellant.

Arnold DiJoseph, P.C., New York (Arnold DiJoseph of counsel), for respondent.

_____

Order, Supreme Court, New York County (Adam Silvera, J.), entered April 19, 2018, which denied defendant's motion for summary judgment dismissing the complaint based on plaintiff's inability to establish a serious injury within the meaning of Insurance Law § 5102(d), unanimously modified, on the law, to dismiss plaintiff's 90/180-day claim, and otherwise affirmed, without costs, and order, same court, Justice and entry date, which granted plaintiff's motion for partial summary judgment on the issue of liability, unanimously affirmed, without costs.

Plaintiff seeks to recover for injuries sustained to her back and left hip as the result of being hit by defendant's vehicle while she was crossing the street.

In support of his motion for summary judgment dismissing the

complaint, defendant submitted, inter alia, the expert report of an orthopedist who found plaintiff had full range of motion in her left hip and apparently found a significant 30 degree limitation in range of motion in the lumbar spine. The orthopedist opined that plaintiff's injuries, as found in MRI reports, were caused by the accident but fully resolved. The orthopedist's findings were sufficient to meet defendant's prima facie burden concerning the claims of left hip injury, but, since his findings of limitations in the lumbar spine conflicted with his findings of an absence of serious injury, the burden did not shift on the lumbar spine claims (*see Santos v New York City Tr. Auth.*, 99 AD3d 550, 550 [1st Dept 2012]; *see Susino v Panzer*, 127 AD3d 523, 524 [1st Dept 2015]; *Clark v Aquino*, 113 AD3d 1076, 1076 [4th Dept 2014]). Defendant also submitted the report of a radiologist who opined that plaintiff's hip conditions were not causally related to the accident, which conflicted with the orthopedist's opinion as to causation, and therefore did not shift the burden of proof to plaintiff on that issue (*see Johnson v Salaj*, 130 AD3d 502, 502-503 [1st Dept 2015]).

In any event, plaintiff raised triable issues of fact through the report of her expert orthopedist, who, among other things, documented limitations in range of motion of her left hip and lumbar spine, and explained his conclusion that the left hip

injury was causally related to the accident (*see Gomez v Davis*, 146 AD3d 456, 456 [1st Dept 2017]; *see also Toure v Avis Rent A Car Sys.*, 98 NY2d 345, 353 [2002]). Defendant's argument that plaintiff failed to explain a gap in her treatment is unavailing, since it ignores her deposition testimony that she in fact was continuing treatment with various medical providers. Moreover, since defendant improperly raised the argument for the first time in reply, plaintiff did not have any opportunity to respond by submitting supporting proof of such treatment (*see Pauling v City Car & Limousine Servs., Inc.*, 155 AD3d 481 [1st Dept 2017]).

However, plaintiff's "90/180-day" claim should have been dismissed, since defendant submitted her deposition testimony that she only missed three days of work, and returned to work after working from home for another five days. Plaintiff submitted no evidence to raise an issue of fact on this claim (*see Thompson v Bronx Merchant Funding Servs., LLC*, 166 AD3d 542, 544 [1st Dept 2018]; *Frias v Son Tien Liu*, 107 AD3d 589, 590 [1st Dept 2013]).

As to liability, plaintiff established her prima facie entitlement to partial summary judgment by showing that she was crossing the street within the crosswalk, with the light in her favor, when defendant's vehicle struck her while making a left turn (*see Perez-Hernandez v M. Marte Auto Corp.*, 104 AD3d 489,

490 [1st Dept 2013]). Plaintiff was not required to demonstrate her freedom from comparative fault to be entitled to partial summary judgment as to defendant's liability (*see Derix v Port Auth. of N.Y. & N.J.*, 162 AD3d 522, 522 [1st Dept 2018]; *see generally Rodriguez v City of New York*, 31 NY3d 312 [2018]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9299-
9300 In re Skylynn M.P.,

A Dependent Child Under the Age
of Eighteen Years, etc.,

Michelle F., et al.,
Respondents-Appellants,

New Alternatives for
Children, Inc.,
Petitioner-Respondent.

_____

Bruce A. Young, New York, for Michelle F., appellant.

Andrew J. Baer, New York, for Edwin P., appellant.

Law Office of James M. Abramson, PLLC, New York (James M. Abramson of counsel), for respondent.

Dawne A. Mitchell, The Legal Aid Society, New York (Riti P. Singh of counsel), attorney for the child.

_____

Order of disposition, Family Court, New York County (Ta-Tanisha D. James, J., at fact-finding; Patria Frias-Colon, J., at disposition), entered on or about March 8, 2018, which, upon a finding of permanent neglect, terminated respondent mother's and respondent father's parental rights to the subject child and committed custody and guardianship of the child to petitioner agency and the Commissioner of Social Services for purposes of adoption, unanimously affirmed, without costs.

The agency established by a preponderance of the evidence

that it was in the child's best interest to terminate respondents' parental rights (*see* Family Court Act § 631; *Matter of Star Leslie W.*, 63 NY2d 136, 147-148 [1984]; *Matter of Latesha Nicole M.*, 219 AD2d 521 [1st Dept 1995]). The child has resided with the foster family for virtually her entire life, has bonded with them and the other children in the foster home, and is thriving in their care, and the foster parents wish to adopt her (*see Matter of Selvin Adolph F. [Thelma Lynn W.]*, 146 AD3d 418, 418-419 [1st Dept 2017]).

A suspended judgment was not appropriate because there was no evidence that further delay would result in a different outcome for the child (*see Matter of Andrea L.P. [Cassandra M.P.]*, 156 AD3d 413, 414 [1st Dept 2017]). The mother and father have not demonstrated any meaningful progress toward reunification, nor have they addressed the conditions which led to the child's removal from their care, and the child deserves permanency after an extended period of uncertainty (*see Matter of Autumn P. [Alisa R.]*, 129 AD3d 519, 520 [1st Dept 2015]).

We have considered respondents' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9301 Florence Namm, Index 15825/16
Plaintiff-Appellant,

-against-

Diana Levy, et al.,
Defendants-Respondents,

East 77th Realty LLC, et al.,
Defendants.

_____

Zalman Schnurman & Miner, P.C., New York (Marc H. Miner of counsel), for appellant.

Goldberg Segalla LLP, Garden City (Brendan T. Fitzpatrick of counsel), for respondents.

_____

Order, Supreme Court, New York County (Arlene P. Bluth, J.), entered on or about October 1, 2018, which, inter alia, granted the motion of defendants Diana Levy and Todd Levy for summary judgment dismissing the complaint as against them, unanimously affirmed, without costs.

Summary judgment was properly granted in this action where plaintiff alleges that she was injured when, while walking from the living room in defendants' apartment to the balcony, she tripped and fell on the step leading to the balcony. The evidence shows that there were no prior accidents or complaints about the step before plaintiff fell, and she testified that she did not look down at the threshold between the living room and

the balcony, which required her to step down onto the balcony's floor (*see Remes v 513 W. 26th Realty, LLC*, 73 AD3d 665 [1st Dept 2010]). The opinion of plaintiff's expert that the balcony's step caused her optical confusion before the accident is belied by the photographs in the record that show a metal threshold and step that are shiny and clearly visible due to the fact that they are a lighter shade of gray than the balcony floor (*see Hall v New Way Remodeling, Inc.*, 168 AD3d 620 [1st Dept 2019]; *Franchini v American Legion Post*, 107 AD3d 432 [2013]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9302 Jenny Rodriguez, Index 161282/17
Plaintiff-Respondent,

-against-

New York City Transit
Authority, et. al.,
Defendants-Appellants,

"John Doe," etc.,
Defendant.

_____

Lawrence Heisler, Brooklyn (Timothy J. O'Shaughnessy of counsel), for appellants.

Sacco & Fillas LLP, Astoria (Joseph Katz of counsel), for respondent.

_____

Order, Supreme Court, New York County (Lisa A. Sokoloff, J.), entered on or about September 11, 2018, which denied the motion of defendants New York City Transit Authority and Manhattan & Bronx Surface Transit Operating Authority for summary judgment dismissing the complaint as against them, unanimously reversed, on the law, without costs, and the motion granted. The Clerk is directed to enter judgment accordingly.

It is well settled that a defendant is not liable where he or she is faced with a sudden and unforeseen occurrence that was not of his or her own making and presents sufficient evidence to support the reasonableness of his or her actions (*see Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327 [1991]; *Ward v Cox*, 38

AD3d 313 [1st Dept 2007]). Here, defendants established their entitlement to judgment as a matter of law in this action where plaintiff was injured when the bus on which she was a standing passenger came to a sudden stop, causing her to fall. The video evidence showed that the accident occurred because a bicyclist suddenly appeared in the parking lane adjacent to defendants' bus, and seconds later fell into the bus's driving lane. At that time, the bus was traveling 17 miles per hour, and within a second of the bicyclist's fall, the bus driver merged to the left lane and applied the brakes. About five seconds later, the bus driver made a complete stop, and the bicyclist remained on the ground, next to the bus. It was apparent from the surveillance footage that if the bus driver had not reacted in the manner in which he did, the bus would have struck the bicyclist (*see Jones v New York City Tr. Auth.*, 162 AD3d 476 [1st Dept 2018]; *Orsos v Hudson Tr. Corp.*, 111 AD3d 561 [1st Dept 2013]).

Plaintiff's contention that more discovery is required is unsupported by anything suggesting that additional discovery will

lead to further relevant evidence (*see* CPLR 3212[f]; *Ehrenhalt v Kinder*, 85 AD3d 553 [1st Dept 2011]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9303 The People of the State of New York, Respondent,

Ind. 2438/09

-against-

Eduardo Rodriguez,
Defendant-Appellant.

_____

Justine Luongo, The Legal Aid Society, New York (Lorraine Maddalo of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Jared Wolkowitz of counsel), for respondent.

_____

Judgment, Supreme Court, New York County (Cassandra M. Mullen, J.), rendered July 17, 2012, convicting defendant, after a jury trial, of failure to verify registration information as a sex offender, and sentencing him to a term of 1⅓ to 4 years, unanimously reversed, on the law, and the matter remanded for a new trial.

The court erred in denying defendant's challenge for cause to a prospective juror. The challenged panelist made a statement reflecting a state of mind likely to preclude the rendering of an impartial verdict (*see* CPL 270.20[1][b]), and the court did not elicit an unequivocal assurance that in rendering a verdict based on the evidence, the panelist could set aside any bias (*People v Arnold*, 96 NY2d 358, 362 [2001]). The juror expressly stated that he was "not sure" he could be impartial in a case involving

a registered sex offender. His general statement about needing to hear the facts did not address his ability to overcome the specific bias he had expressed. "If there is any doubt about a prospective juror's impartiality, trial courts should err on the side of excusing the juror, since at worst the court will have replaced one impartial juror with another" (*Arnold*, 96 NY2d at 362 [internal quotation marks omitted]). In view of our conclusion as to this juror, we need not address whether a second juror was improperly seated.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9305 Madison 96th Associates, LLC, Index 601386/03
Plaintiff-Respondent, 108695/04

-against-

17 East 96th Owners Corp.,
Defendant-Appellant.

- - - - -

17 East 96th Owners Corp.,
Plaintiff-Appellant,

-against-

Madison 96th Associates, LLC, et al.,
Defendants-Respondents.

_____

Rosenberg Calica & Birney LLP, Garden City (Robert M. Calica and Judah Serfaty of counsel), for appellant.

Schoeman Updike Kaufman & Gerber LLP, New York (Charles B. Updike of counsel), for Madison 96th Associates, LLC, respondent.

Gartner & Bloom, PC, New York (Alexander D. Fisher of counsel), for 21 East 96th Street Condominium, respondent.

_____

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered on or about May 9, 2018, which, to the extent appealed from as limited by the briefs, having reverse bifurcated the consolidated actions and ordered a trial of damages on the parties' claims of trespass to be followed by a trial of liability on 17 East's claim, after a nonjury trial of damages, awarded Madison damages in the amount of $800,000 and conditionally awarded 17 East $2 in nominal damages, unanimously

affirmed, without costs.

The trial court providently exercised its discretion in directing a trial of 17 East's damages before a trial of liability (*see* CPLR 603). The court may have concluded that ascertaining the quantum of 17 East's damages would increase settlement prospects and obviate the need for a lengthy trial on liability. The court also providently permitted 17 East to present some evidence pertaining to liability at the damages trial, despite Madison's concession that its underpinning encroached on 17 East's property (*see* CPLR 4011).

The court correctly concluded that the measure of Madison's damages was the difference between the purchase price its predecessor in interest (the seller) obtained in the initial sale agreement and the subsequent reduced price (*see 17 E. 96th Owners Corp. v Madison 96th St. Assoc., LLC*, 144 AD3d 452, 452-453 [1st Dept 2016]). The buyer's principal and the seller's attorney both testified that the sale would have closed at the initial $8 million price but for 17 East's refusal to remove air conditioners in its building that were encroaching on Madison's airspace. The court also credited these witnesses' testimony that the encroachment limited the buildable space and that the litigation risk and delay warranted the 10% price reduction (*see Wong v Hsia Chao Yu*, 160 AD3d 549, 550 [1st Dept 2018] [court's

credibility determinations in nonjury trial are entitled to great deference]).

Contrary to 17 East's claim, in computing Madison's damages, the court did not assume that the trespass continued into the future; the calculation was based on the buyer's testimony that he agreed to pay the reduced price because of a prior judicial ruling that the air conditioners had to be removed. Moreover, if the damages were measured at the time the action was filed, the seller would be entitled to $8 million, because by that time the potential buyer had decided not to pursue the purchase on account of the air conditioners.

17 East failed to demonstrate that the de minimis encroachment of Madison's underpinning onto its yard resulted in any injury to it, and its claim that the encroachment might diminish the value of the real property to a future developer is speculative.

17 East failed to show that it should be reimbursed for costs incurred subsequent to the construction of the underpinning, since its witness testified that it sustained no damages from the underpinning and that the underpinning should not be removed. Moreover, as the court noted, the invoices submitted by 17 East indicate that some of the charges relate to litigation support, which is not compensable.

We have considered 17 East's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9306-
9306A Index 652852/16

James M. Carey,
Plaintiff-Appellant,

-against-

Standard Security Life Insurance Company of New York,
Defendant-Respondent,

McNeil & Company, Inc.,
Defendant.

_____

Riemer & Associates, LLC, New York (Scott M. Riemer of counsel), for appellant.

Clyde & Co US LLP, New York (Nicholas L. Magali of counsel), for respondent.

_____

Order, Supreme Court, New York County (Melissa A. Crane, J.), entered May 24, 2018, which, inter alia, granted the motion of defendant Standard Security Life Insurance Company (Standard Security) for summary judgment dismissing the complaint, and order, same court and Justice, entered August 22, 2018, which, insofar as appealed from, denied plaintiff's motion for leave to renew, unanimously affirmed, without costs.

Standard Security established its entitlement to summary judgment through the affirmed report of its orthopedist, who opined that plaintiff was capable of working, and also plaintiff's admission in his 2013 commercial drivers license

application that he had no physical impairments or abnormalities, including any impairment of the leg, which would prevent him from performing a job as a commercial truck driver (*see Vila v Foxglove Taxi Corp.*, 159 AD3d 431 [1st Dept 2018]). Plaintiff submitted no sworn medical or expert evidence in opposition to Standard Security's motion (*see Henkin v Fast Times Taxi*, 307 AD2d 814 [1st Dept 2003]), and his 2018 affidavits were insufficient to overcome his 2017 testimony that he hurt his back in 2007 and 2008 while working for his employer, and his 2014 affidavit in support of his insurance appeal, in which he stated that he was disabled due to back injuries (*see Vila* at 431). Even if we were to consider plaintiff's evidence, plaintiff does not establish issues of fact as to whether his alleged disability was related to his left knee injury sustained while engaged in volunteer work for his local fire department, as defined by the Standard Security insurance policy.

Although a motion for renewal may be granted where the failure to submit an affidavit was inadvertent and absent any showing by defendants of prejudice attributable to the short delay caused by such failure (*see Ramos v Dekhtyar*, 301 AD2d 428, 429 [1st Dept 2003]), plaintiff has not demonstrated that he met

such burden before the motion court. Even if leave to renew had been granted, there exists no basis to disturb the original determination.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9308- Ind. 1005N/14
9309- 2302N/14
9309A The People of the State of New York, 1418N/15
Respondent,

-against-

Joan Checo,
Defendant-Appellant.

_____

Seymour W. James, Jr., The Legal Aid Society, New York (Adrienne M. Gantt of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Alan Gadlin of counsel), for respondent.

_____

An appeal having been taken to this Court by the above-named appellant from judgments of the Supreme Court, New York County (Michael R. Sonberg, J.), rendered September 6, 2016,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgments so appealed from be and the same are hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Counsel for appellant is referred to
§ 606.5, Rules of the Appellate
Division, First Department.

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9310 The People of the State of New York, Ind. 3287/14
Respondent,

-against-

Jose Pineiro,
Defendant-Appellant.

_____

Robert S. Dean, Center for Appellate Litigation, New York (Abigail Everett of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Nicole Neckles of counsel), for respondent.

_____

Order, Supreme Court, Bronx County (Margaret L. Clancy, J.), entered on or about March 5, 2018, which adjudicated defendant a level one sexually violent offender pursuant to the Sex Offender Registration Act (Correction Law art 6-C), unanimously affirmed, without costs.

The court properly designated defendant a sexually violent offender because he was convicted of an enumerated offense, and

it lacked discretion to refrain from doing so (*see People v Bullock*, 125 AD3d 1 [1st Dept 2014], *lv denied* 24 NY3d 915 [2015]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Sweeny, J.P., Richter, Manzanet-Daniels, Webber, JJ.

9311 Thomas J. Orr, etc., Index 160847/16
Plaintiff-Respondent,

-against-

Urban American Management Corp., et al.,
Defendants-Appellants.

_____

Eustace, Marquez, Epstein, Prezioso & Yapchanyk, New York (Christopher M. Yapchanyk of counsel), for Urban American Management Corp. and Urban Greenfit SPV, LLC, appellants.

Law Offices of **Tobias** & Kuhn, New York (Ioana Wenchell of counsel), for Wellspring Wireless, Inc., appellant.

McManimon, Scotland & Baumann, LLC, New York (Andrea Dobin of counsel), for respondent.

_____

Order, Supreme Court, New York County (Lynn R. Kotler, J.), entered June 25, 2018, which denied defendants' motions to dismiss the complaint, unanimously affirmed, without costs.

The motion court properly declined to dismiss the instant action as time-barred. Plaintiff bankruptcy trustee may benefit from the CPLR 205(a) extension provision to render the instant action timely, notwithstanding the one-month gap between the November 2016 dismissal of the prior action, brought by debtor Leon Kartsanis, and the December 2016 commencement of the instant action by the trustee (*Goodman v Skanska USA Civ., Inc.*, 169 AD3d 1010 [2d Dept 2019]; *Rivera v Markowitz*, 71 AD3d 449, 450 [1st Dept 2010]).

The reopening of Kartsanis's bankruptcy case renders the

doctrine of judicial estoppel inapplicable as it "nullif[ied] the final determination upon which judicial estoppel could be predicated" (*Goodman*, 169 AD3d at 1013; *Koch v National Basketball Assn.*, 245 AD2d 230, 230-31 [1st Dept 1997]).

We have considered defendants' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9312 In re Adam Kotowski, Index 158519/17
Petitioner-Appellant,

-against-

The Port Authority of New York
and New Jersey, et al.,
Respondents-Respondents.

_____

Law Office of Errol A. Brett, Floral Park (Errol A. Brett of counsel), for appellant.

The Port Authority Law Department, New York (Jonathan I. Smith of counsel), for respondents.

_____

Order and judgment (one paper), Supreme Court, New York County (Nancy M. Bannon, J.), entered August 31, 2018, which granted respondents' motion to dismiss the petition seeking, inter alia, to annul respondents' determination, dated June 2, 2017, not to certify petitioner for appointment as a police officer of the Port Authority of New York and New Jersey, and dismissed the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

Respondents' determination was not arbitrary and capricious and had a rational basis (*see generally Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). Respondent Port Authority "has wide discretion in determining the fitness of candidates[,] . . . particularly . . . in the hiring of law enforcement

officers, to whom high standards may be applied" (*Matter of City of New York v New York City Civ. Serv. Commn.*, 61 AD3d 584, 584 [1st Dept 2009] [internal quotation marks omitted]). Here, respondents reasonably relied on the findings of two psychologists, who, after interviewing petitioner, concluded that, for a variety of reasons, he was psychologically unfit for the position of police officer.

Petitioner did not demonstrate the existence of a triable issue of fact but raised only unsubstantiated allegations and speculation concerning the motives of the psychologists who recommended denial of his application (see *Matter of Van Rabenswaay v City of New York*, 140 AD3d 596 [1st Dept 2016]; *see* CPLR 7804[h]). Nor did petitioner demonstrate that further discovery was warranted under the circumstances (see *Stapleton Studios v City of New York*, 7 AD3d 273, 275 [1st Dept 2004]).

We have considered petitioner's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Sweeny, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9313 In re Trust of Lucille B. Williams,
Grantor.
- - - - -
David M. Williams, et al.,
Petitioners-Respondents,

-against-

Claire Martino formerly known as Claire Fisher Sardoni,
Respondent-Appellant.

File 2554/12AB

_____

Markewich & Rosenstock LLP, New York (Eve R. Markewich of counsel), for appellant.

Sullivan Papain Block McGrath & Cannavo, P.C., New York (Eric C. Goldman of counsel), for respondents.

_____

Order, Surrogate's Court, New York County (Nora S. Anderson, S.), entered October 4, 2018, to the extent that it denied respondent's motion for summary judgment dismissing the petition to set aside the restatement, dated March 20, 2009 (Restatement), of the Lucille B. Williams 2007 Trust, dated October 2, 2007, as restated November 7 2008 (2007 Trust), on the ground of undue influence, unanimously affirmed, with costs.

Petitioners, decedent's stepchildren, raised a triable issue whether respondent, decedent's sole surviving child and their stepsister, unduly influenced decedent into executing the Restatement, which, for the first time, denied them any share of

a brokerage account that decedent had inherited from her husband, the stepchildren's father (*see Matter of Walther*, 6 NY2d 49, 55-56 [1959]; *Matter of Camac*, 300 AD2d 11, 12 [1st Dept 2002]; *Matter of Ryan*, 34 AD3d 212, 213 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007]; *Matter of Aoki*, 99 AD3d 253, 267-268 [1st Dept 2012]).

In finding a triable issue of undue influence, the Surrogate's Court properly cited the unexpected traumatic death, after a motorcycle accident in late 2008, of decedent's 55 year-old son, who helped her with her daily financial affairs and health issues for years. His death left decedent, who was by then 80 years old, unconsolable and distressed, and further compromised her mental and physical health. As the court noted, decedent had consistently bequeathed the children and stepchildren equal shares of that brokerage account in wills and trusts in 2001, 2007, and 2008, yet decedent, in March 2009, executed the Restatement, which denied them any share of that account and left the entire amount to respondent.

The court properly cited the lack of evidence that decedent's feelings towards her stepchildren had changed to warrant such a departure from prior wills and trusts. As late as November 2008, when decedent revised her testamentary instruments, she did not deny them part of that account, yet a

few months after her son died in December 2008, by which time respondent had moved in with decedent and was taking care of her health and financial matters, decedent made that change. In addition, respondent attended the March 2009 meeting when decedent announced her intention to change her dispositive plan in respondent's favor, and respondent held a long-standing animosity towards her stepsiblings, dating from childhood. Although decedent explained at that meeting logical reasons for that change, including that her assets were diminishing and she wanted to ensure that her only daughter had sufficient funds, the previously described factors nevertheless warrant submission of the issue to a jury (*see Walther* at 54; *Aoki*, 99 AD3d at 267-268).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9314 East River Mortgage Corp., Index 112574/11
Plaintiff-Appellant,

-against-

OneWest Bank, N.A.,
Defendant-Respondent.

Americorp Funding Inc., also
known as Americorp Funding, et al.,
Defendants,

_____

Kenneth R. Berman, Forest Hills, for appellant.

Zeichner Ellman & Krause LLP, New York (Jantra Van Roy of counsel), for respondent.

_____

Order, Supreme Court, New York County (Debra A. James, J.), entered May 15, 2017, to the extent it granted defendant CIT Bank, N.A.'s (f/k/a OneWest Bank, N.A.) motion for summary judgment as to liability on its counterclaims for unjust enrichment and conversion, and denied plaintiff's cross motion for summary judgment on its complaint and dismissing the counterclaims, unanimously modified, on the law, to deny CIT's motion, and otherwise affirmed, without costs.

This action was commenced to quiet title to a condominium unit. CIT moved for permission to intervene on the ground that it was the holder of the note underlying the mortgage on the unit. Following its filing of a bankruptcy petition, plaintiff

sold the unit, as authorized by the Bankruptcy Court, in October 2012.

Contrary to plaintiff's contention, CIT was not required to file a proof of claim in plaintiff's bankruptcy case to satisfy its lien (assuming it has one) out of the proceeds from plaintiff's sale of a condominium unit. The Bankruptcy Court dismissed plaintiff's case in May 2013, and therefore was divested of exclusive jurisdiction over plaintiff's property (*In re Garnett*, 303 BR 274, 278 [ED NY 2003]). CIT moved for summary judgment in state court in January 2016, well after the dismissal of plaintiff's bankruptcy case. Moreover, the Bankruptcy Court dismissed the case "without prejudice to and with full reservation and preservation of any rights of . . . [plaintiff's] creditors under state law or pending state court proceedings of any kind." The instant action, which was commenced in 2011, was pending at the time of the Bankruptcy Court's May 2013 order.

Contrary to plaintiff's further contention, CIT's lien, if it had one, was not extinguished by CIT's failure to file a proof of claim during plaintiff's bankruptcy case (*Hassett v Citicorp N. Am., Inc. [In re CIS Corp.]*, 1997 WL 666265, *2, 1997 US Dist LEXIS 16765, *6-7 [SD NY, Oct. 24, 1997, No. 97 Civ. 622(LMM)]).

CIT contends that the issue of its standing to bring counterclaims was decided when the court granted OneWest's motion

to intervene, in June 2015. However, the court did not decide that OneWest (CIT as of August 3, 2015) had standing; it merely found that OneWest had "established a *colorable claim* that it was the holder of the mortgage in question" (emphasis added).

In any event, it is the note, not the mortgage, that conveys standing to foreclose (*Aurora Loan Servs., LLC v Taylor*, 25 NY3d 355, 361 [2015]). The parties assume that CIT's standing to bring counterclaims is governed by the same requirements as its standing to foreclose on a mortgage. In a foreclosure case, the note must be transferred to the plaintiff before it commences the action. By analogy, the note signed by defendant Barry Satchwell Smith (or Satchwell-Smith) had to be transferred to OneWest before OneWest served its counterclaims on July 31, 2015.

CIT failed to establish, by proof in admissible form, that the note was transferred to OneWest before July 31, 2015. Americorp's endorsement of the note to IndyMac, and the signature of the FDIC (as IndyMac's receiver) on an allonge endorsing the note to OneWest, are undated. In her affidavit, Varner said that CIT (by which she included OneWest up to August 2, 2015) purchased the loan from the FDIC as of March 19, 2009 and that "[s]ince CIT Bank purchased the Loan, Deutsche Bank, as custodian for CIT Bank, has maintained physical possession of the . . . Note." However, as an employee of CIT, Varner is not the proper

person to say that Deutsche Bank has maintained physical possession of the note. CIT should have submitted an affidavit by an employee of Deutsche Bank (*see Wells Fargo*, 139 AD3d at 521; *IRB-Brasil Resseguros S.A. v Eldorado Trading Corp. Ltd.*, 68 AD3d 576, 577 [1st Dept 2009]).

CIT argues, citing *JP Morgan Chase Bank N.A. v Miodownik* (91 AD3d 546 [1st Dept 2012], *lv dismissed* 19 NY3d 1017 [2012]), that the Loan Sale Agreement shows that the FDIC properly transferred the loans to it. However, the Loan Sale Agreement says that the FDIC transfers all of its right, title and interest in the loans in Attachment A, and the copy of Attachment A in the record on appeal is blank. CIT claims that the loan schedule was attached as the last page of Exhibit C and that plaintiff omitted this page from the record on appeal. Unfortunately, CIT did not submit a Supplemental Record or Respondent's Appendix with the missing page; instead, it asks us to take judicial notice of that page. However, only limited documents from this case are available at Supreme Court Records On-Line Library, and Exhibit C is not among them.

The fact that CIT's motion for summary judgment should have been denied does not mean that plaintiff's cross motion for summary judgment dismissing the counterclaims on standing grounds should have been granted. CIT raised a question of fact as to

whether it possessed Smith's note by July 31, 2015, and therefore whether it had standing to bring the counterclaims (*see Deutsche Bank Trust Co. Ams. v Vitellas*, 131 AD3d 52, 60 [2d Dept 2015]). CIT should be given the chance to prove its case at trial by calling the proper witnesses.

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9315 The People of the State of New York, Respondent, Ind. 1642/16

-against-

Johnell Muhammad, Defendant-Appellant.

_____

Christina A. Swarns, Office of The Appellate Defender, New York (Angie Louie of counsel), for appellant.

_____

Judgment, Supreme Court, New York County (Thomas Farber, J.), rendered December 7, 2016, unanimously affirmed.

Application by defendant's counsel to withdraw as counsel is granted (*see Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with defendant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9316- Index 158295/13
9317- 590917/13
9318N 590134/14
9318NA Antonio Urquiza, etc., et al., 5901180/14
Plaintiffs-Respondents, 595081/14
595287/17

-against-

Park and 76th St., Inc., et al.,
Defendants,

Mary L. Carpenter, et al.,
Defendants-Appellants,

Nordic Custom Builders Inc.,
Defendant-Respondent.

- - - - -

[And Third Party Actions]

- - - - -

Antonio Urquiza, etc., et al.,
Plaintiffs-Respondents,

-against-

Park and 76th St., Inc., et al.,
Defendants,

Nordic Custom Builders Inc.,
Defendant-Appellant,

- - - - -

[And Third Party Actions]

- - - - -

Nordic Custom Builders Inc.,
Third Third-Party Plaintiff-Appellant,

-against-

Stephen Gamble, Inc.,
Third Third-Party Defendant-Respondent.

- - - -

Antonio Urquiza, etc., et al.,
Plaintiffs-Respondents,

-against-

Park and 76th St., Inc., et al.,
Defendants,

Mary L. Carpenter, et al.,
Defendants-Appellants.

- - - - -

[And Third Party Actions]

Mischel & Horn, P.C., New York (Scott T. Horn of counsel), for Mary L. Carpenter and Edmund L. Carpenter, appellants.

Baxter, Smith & Shapiro, P.C., Hicksville (Sim R. Shapiro of counsel), for Nordic Custom Builders Inc., appellant.

Raymond Schwartzberg & Associates, PLLC, New York (Raymond Schwartzberg of counsel), for Antonio Urquiza and Stevens A. Sanguino, respondents.

Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale (Michael T. Reagan of counsel), for Stephen Gamble, Inc., respondent.

Order, Supreme Court, New York County (Manuel J. Mendez, J.), entered May 24, 2018, which granted plaintiffs' motion for summary judgment on liability on the Labor Law § 240(1) claim, unanimously affirmed, without costs. Order, same court, Justice, and date of entry, which denied defendant/third third-party plaintiff Nordic Custom Builders, Inc.'s motion for summary judgment dismissing the complaint and any claims as against it and on its third third-party claim for common law indemnification against Stephen Gamble, Inc., unanimously modified, on the law, to dismiss the claim for punitive damages and to dismiss the

Labor Law § 241(6) claim except insofar as predicated upon Labor Law § 23-1.7(d), and as so modified, affirmed, without costs. Order, same court, Justice, and date of entry, insofar as it denied defendant/second third-party plaintiffs Mary L. Carpenter and Edmund Carpenter's (defendant owners) motion for summary judgment dismissing the Labor Law §§ 240(1) and 241(6) claims as against them, unanimously reversed, on the law, without costs, and the motion granted. Appeal from order, same court and Justice, entered January 17, 2019, unanimously dismissed, without costs, as moot.

The homeowners' exemption to liability under Labor Law §§ 240(1) and 241(6) is clearly applicable here where defendant owners Edmund and Mary Carpenter did not direct or control the work in their cooperative apartment that they intended to use for personal use (*see Affri v Basch*, 13 NY3d 592, 595-596 [2009]; *Dominguez v Barsalin, LLC*, 158 AD3d 532 [1st Dept 2018]; *Thompson v Geniesse*, 62 AD3d 541 [1st Dept 2009]). Although defendant owners failed to plead the homeowners' exemption as an affirmative defense, Supreme Court should have granted their motion for summary judgment dismissing the complaint "since plaintiff was not surprised by the defense, and fully opposed the motion" (*Bautista v Archdiocese of N.Y.*, 164 AD3d 450, 451 [1st Dept 2018]).

Decedent's action in standing on the radiator casing in front of the open window to accomplish his work was not the sole proximate cause of his accident as he was not provided proper safety devices for working next to the open window (*see John v Baharestani*, 281 AD2d 114, 117 [1st Dept 2001]). Moreover, while plaintiffs have abandoned their Labor Law § 241(6) claim except insofar as predicated upon Industrial Code § 23-1.7(d), issues of fact exist as to whether a slippery condition existed in violation of that Industrial Code provision where decedent was working while standing on an unsecured plywood board atop the radiator casing next to an open window during a rainstorm *(see Bradley v Morgan Stanley & Co., Inc.*, 21 AD3d 866, 867-868 [2d Dept 2005]; *Partridge v Waterloo Cent. School Dist.*, 12 AD3d 1054, 1056 [4th Dept 2004]). With regard to plaintiffs' Labor Law §§ 200 and common law negligence claims against Nordic and Nordic's claim for common law indemnification against decedent's employer, issues of fact exist as to whether Nordic's site supervisor directed that the work be performed (*see Wray v Morse Diesel Intl. Inc.*, 23 AD3d 260, 261 [1st Dept 2005]) without the authorization of decedent's employer and whether Nordic's site supervisor was an independent contractor for whose acts it is not liable.

Supreme Court should have dismissed the claim for punitive

damages (*see generally Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489 [2007]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Richter, J.P., Manzanet-Daniels, Webber, Kern, JJ.

9319N & M-1773 Index 158313/18

Aman Kapoor doing business as Sewlutions,
Plaintiff-Appellant,

-against-

Interzan LLC,
Defendant-Respondent.

_____

Law Office of Amos Weinberg, Great Neck (Harriette N. Boxer of counsel), for appellant.

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, Brooklyn (Maya K. Petrocelli of counsel), for respondent.

_____

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered November 30, 2018, which granted defendant's motion to vacate the default judgment entered against it, unanimously affirmed, with costs.

A defendant seeking to vacate a judgment entered upon its default must demonstrate a reasonable excuse for the delay and a meritorious defense to the action (*see generally Eugene Di Lorenzo, Inc. v A.C. Dutton Lbr. Co.*, 67 NY2d 138, 141 [1986]; CPLR 5015[a][1]). Here, the record shows that defendant proffered a reasonable excuse of law office failure by submitting documentary evidence showing that, upon receipt of the draft summons and complaint, it promptly forwarded the filings to its

legal counsel on retainer. Defendant also submitted an affidavit from its CEO who averred that he spoke with counsel and requested that counsel monitor the case filings and respond accordingly. It was reasonable for defendant to believe that its counsel would take the appropriate actions to defend the matter (*see e.g. Rodgers v 66 E. Tremont Hgts. Hous. Dev. Fund Corp.*, 69 AD3d 510, 511 [1st Dept 2010]; *Heskel's W. 38th St. Corp. v Gotham Constr. Co. LLC*, 14 AD3d 306, 307 [1st Dept 2005]). Moreover, upon learning of the default judgment entered against it when its bank froze its account, defendant immediately retained new counsel, who moved within four days to vacate the default.

There is no dispute that defendant also demonstrated a meritorious defense to plaintiff's claims.

M-1773 ***Kapoor d/b/a Sewlutions v Interzan LLC***

Motion to enlarge record denied.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK

Sweeny, J.P., Renwick, Tom, Kapnick, Oing, JJ.

9385 [M-1889] In re The People of the State of New York, ex rel., Abigail Swenstein, etc.,
Petitioner-Appellant,

-against-

Cynthia Brann, etc.,
Respondent-Respondent.

Index 450260/19
Ind. 2196/18

_____

Janet E. Sabel, The Legal Aid Society, New York (Abigail Swenstein of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Kelli Clancy of counsel), for respondent.

_____

Judgment (denominated an order), Supreme Court, New York County (Michael Obus, J.), entered on or about March 15, 2019, denying the petition for a writ of habeas corpus and dismissing the proceeding, unanimously affirmed, without costs.

We find that the writ of habeas corpus was properly denied (*see* CPLR 7010).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 14, 2019

CLERK