

October 23, 2014

CASES

4 No. 167

The People &c.,  
Respondent,

v.

William Cullen,  
Appellant.

Order affirmed, in a memorandum.

Judges Graffeo, Read, Pigott and Abdus-Salaam  
concur.

Chief Judge Lippman concurs in result in an opinion  
in which Judge Rivera concurs.

Judge Smith concurs in result for reasons stated in his  
concurring opinion in People v Ludwig, \_\_\_ NY3d  
\_\_\_ (decided today).

1 No. 156

Paul M. Ellington,  
Appellant,

v.

EMI Music, Inc., et al.,  
Defendants,  
EMI Mills Music, Inc.,  
Respondent.

Order affirmed, with costs.

Opinion by Judge Abdus-Salaam.

Judges Graffeo, Read and Pigott concur.

Judge Smith concurs in result in an opinion.

Judge Rivera dissents and votes to reverse in an  
opinion in which Chief Judge Lippman concurs.

4 No. 155

The People &c.,  
Appellant-Respondent,

v.

Stanley R. Kims, II,  
Respondent-Appellant.

Order affirmed.

Opinion by Judge Rivera.

Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Abdus-Salaam concur.

4 No. 166

The People &c.,  
Respondent,

v.

Daniel A. Ludwig,  
Appellant.

Order affirmed.

Opinion by Judge Read.

Judges Graffeo, Pigott and Abdus-Salaam concur.

Judge Smith concurs in result in an opinion.

Chief Judge Lippman dissents in an opinion in which  
Judge Rivera concurs.

No. 230 SSM 19

The People &c.,  
Respondent,  
v.  
Kenneth Moore,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, plea vacated and the accusatory instrument dismissed, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

No. 162

Motorola Credit Corporation,  
Appellant-Respondent,  
Nokia Corporation,  
Plaintiff-Counter-  
Defendant,  
Motorola, Inc., et al.,  
Counter-Defendants,  
v.  
Standard Chartered Bank,  
Respondent-Appellant,  
Murat Hakan Uzan, et al.,  
Defendants-Counter-  
Claimants,  
Kemal Uzan, et al.,  
Defendants.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified question answered in the affirmative. Opinion by Judge Graffeo. Chief Judge Lippman and Judges Read, Smith and Rivera concur. Judge Abdus-Salaam dissents in an opinion in which Judge Pigott concurs.

No. 160

Roberto Ramos, et al., &c.,  
Appellants,  
v.  
SimplexGrinnell LP, et al.,  
Respondents.

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 this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified questions answered in accordance with the opinion herein. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read, Pigott, Rivera and Abdus-Salaam concur.

4                      No. 164  
The People &c.,  
    Respondent,  
    v.  
Genna A. Turner,  
    Appellant.

Order reversed, defendant's plea vacated and case remitted to County Court, Monroe County, for further proceedings on the indictment.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Pigott and Rivera concur.  
Judge Abdus-Salaam dissents in an opinion in which Judge Smith concurs.

## MOTIONS

1                    Mo. No. 2014-906  
In the Matter of 21 Group, Inc., &c.,  
Appellant,  
v.  
New York State Liquor Authority,  
Respondent.

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

3                    Mo. No. 2014-941  
In the Matter of James Argentina,  
Appellant,  
v.  
Albert Prack, &c.,  
Respondent.

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

1                    Mo. No. 2014-1020  
The People &c.,  
Respondent,  
v.  
Rashid Bilal,  
Appellant.

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

4                    Mo. No. 2014-862  
In the Matter of State of New York,  
Respondent,  
v.  
Michael C.B., &c.,  
Appellant.

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

1                    Mo. No. 2014-1021  
The People &c.,  
Respondent,  
v.  
Scott Barden,  
Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2014-922  
In the Matter of Patricia Benjamin,  
                          Appellant,  
                          v.  
New York City Department of Education, et  
al.,  
                          Respondents.

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

1                    Mo. No. 2014-932  
Anthony Branham, Sr., &c.,  
                          Appellant,  
                          v.  
R.V. Ambulette, Inc., et al.,  
                          Respondents.

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.

3                    Mo. No. 2014-943  
Donna B. Clark,  
                          Appellant,  
                          v.  
Farmers New Century Insurance Company,  
&c.,  
                          Respondent.

Motion, insofar as it seeks leave to appeal from the May 2014 Appellate Division order, denied; motion for leave to appeal from the remaining orders is otherwise dismissed upon the ground that the Court of Appeals does not have jurisdiction to entertain it (see NY Const, art VI, § 3[b]; CPLR 5602).  
Motion for poor person relief dismissed as academic.

4                    Mo. No. 2014-1035  
The People &c.,  
                          Respondent,  
                          v.  
Robert J. Cooke,  
                          Appellant.

Motion for assignment of counsel granted and Mary P. Davison, Esq., c/o Davison Law Office, 61 North Main St., Suite C, PO Box 652, Canandaigua, NY 14424 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2014-948  
Michael Fasolo et al.,  
    Appellants,  
    v.  
Joseph A. Scarafile,  
    Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the August 2014 Appellate Division order affirming so much of Supreme Court's order as granted the motion to dismiss the complaint, denied; motion for leave to appeal otherwise dismissed upon the ground that the remainder of the August 2014 Appellate Division order does not finally determine the action within the meaning of the Constitution.

2                    Mo. No. 2014-888  
In the Matter of Anthony Frank Fizzinoglia,  
&c., deceased.  
  
Josephine Paradiso Fizzinoglia,  
    Appellant;  
Frank Fizzinoglia, &c.,  
    Respondent.

Motion for leave to appeal granted.

2                    Mo. No. 2014-933  
In the Matter of Seth Hart,  
et al.,  
    Appellants,  
    v.  
Town Board of Town of Huntington, &c., et  
al.,  
    Respondents,  
et al.,  
    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2014-1062  
In the Matter of Trenasia J. (Anonymous).

Administration for Children's Services,  
Respondent;  
Frank J. (Anonymous),  
Appellant.  
(And Three Other Proceedings.)

Motion by The Bronx Defenders et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

4                    Mo. No. 2014-877  
In the Matter of Robert Jones,

Appellant,  
v.  
Theresa Laird,  
Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2014-897  
Daljit Kumar, et al.,  
Appellants,

v.  
William Farber, &c., et al.,  
Respondents,  
et al.,  
Defendants.  
(And a Third-Party Action.)

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

1                    Mo. No. 2014-929  
Larry D. Martin,  
Appellant,

v.  
Daily News L.P., et al.,  
Respondents,  
et al.,  
Defendant.  
(And Another Action.)

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

3                    Mo. No. 2014-936  
In the Matter of Reginald McFadden,  
                          Appellant,  
                          v.  
Albert Prack, &c.,  
                          Respondent.

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

2                    Mo. No. 2014-957  
Mount Sinai Hospital, &c.,  
                          Respondent,  
                          v.  
Dust Transit, Inc.,  
                          Appellant.

Motion for leave to appeal dismissed as untimely  
(see CPLR 5513[b]; 2103[b][2]).

2                    Mo. No. 2014-907  
The People &c.,  
                          Respondent,  
                          v.  
John Nethercott,  
                          Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2014-881  
In the Matter of Asianna NN.  
et al., &c.

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

Albany County Department of Children,  
Youth and Families,  
                          Respondent;  
Kansinya OO.,  
                          Appellant.

4                    Mo. No. 2014-978  
The People &c.,  
                          Respondent,  
                          v.  
Robert Pealer,  
                          Appellant.

Motion for reargument denied.

2 Mo. No. 2014-946  
Barbara Roske,  
Appellant,  
v.  
Stephen Corcoran et al.,  
Respondents.

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

2 Mo. No. 2014-930  
Patricia Schwartz,  
Appellant,  
v.  
Ishaque Nagori, et al.,  
Respondents.

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 (see Cuadrado v New York City Tr. Auth., 14 NY3d 748 [2010]).

4 Mo. No. 2014-767  
In the Matter of Sierra Club,  
et al.,  
Appellants,  
v.  
Village of Painted Post, et al.,  
Respondents.

Motion for leave to appeal granted.

3 Mo. No. 2014-904  
In the Matter of Robert Smith,  
Appellant,  
v.  
New York State Department of Corrections  
and Community Supervision et al.,  
Respondents.

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

1                    Mo. No. 2014-895  
In the Matter of South Bronx Unite!, et al.,  
    Appellants,  
    v.  
New York City Industrial Development  
Agency, et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2014-797  
In the Matter of the State of New York,  
    Respondent,  
    v.  
Enrique T.,  
    Appellant.

Motion to amend the caption dismissed as academic.

1                    Mo. No. 2014-969  
In the Matter of the State of New York,  
    Respondent,  
    v.  
Enrique T.  
    Appellant.

Motion by appellant for permission to withdraw the  
appeal granted and appeal marked withdrawn.

                    Mo. No. 2014-858  
John Stefatos,  
    Appellant,  
et al.,  
    Plaintiff,  
    v.  
Fred-Doug Manager, LLC, et al.,  
    Respondents.

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

1 Mo. No. 2014-911  
Thomas Toth,  
Appellant,  
v.  
New York City Department of Citywide  
Administrative Services,  
Respondent.

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

1 Mo. No. 2014-1028  
Universal American Corp.,  
Appellant,  
v.  
National Union Fire Insurance Company of  
Pittsburgh, PA.,  
Respondent.

Motion by United Policyholders for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.  
Chief Judge Lippman took no part.

4 Mo. No. 2014-1025  
The People &c.,  
Respondent,  
v.  
Christopher E. Walker,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2014-954  
Andrew E. Wisoff,  
Appellant,  
v.  
City of Schenectady,  
Respondent.

Motion for leave to appeal denied.