

May 05, 2016

CASES

2 No. 124 SSM 7

Marie Castiglione, et al.,
 Respondents,

v.

Robert Kruse, et al.,
 Appellants.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, plaintiffs' motion for summary judgment on the issue of liability denied, and certified question answered in the negative. On this record, triable questions of fact preclude summary judgment in plaintiffs' favor. Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

2 No. 60

The People &c.,
 Respondent,

v.

Andre Harrison,
 Appellant.

Order affirmed.
Opinion by Judge Fahey.
Chief Judge DiFiore and Judges Pigott, Abdus-Salaam, Stein and Garcia concur.
Judge Rivera dissents in an opinion.

3 No. 49

In the Matter of Highbridge Broadway, LLC,
 Appellant,

v.

Assessor of the City of Schenectady,
 Respondent,
Schenectady City School District,
 Respondent.

Order insofar as appealed from reversed, with costs, and order of Supreme Court reinstated.
Opinion by Chief Judge DiFiore.
Judges Pigott, Rivera, Abdus-Salaam, Fahey and Garcia concur.
Judge Stein dissents and votes to affirm in an opinion.

2 No. 64

Michael Jiannaras,
Plaintiff,
v.
Mike Alfant, et al.,
Appellants,
et al.,
Defendant;
Kathleen M. Ackerman, et al.,
Non-Party Respondents.

Order affirmed, with costs, and certified question answered in the affirmative.

Opinion by Judge Pigott.
Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

1 No. 54

In the Matter of Kenneth Cole Productions,
Inc., Shareholder Litigation

Erie County Employees Retirement System,
Appellant,
v.
Michael J. Blitzer, et al.,
Respondents,
Marlin Equities VII, LLC,
Defendant.

Order affirmed, with costs.

Opinion by Judge Stein.
Judges Pigott, Rivera, Abdus-Salaam, Fahey and Garcia concur.
Chief Judge DiFiore took no part.

1 No. 38

Millennium Holdings LLC,
Plaintiff,
The Northern Assurance Company of
America,
Appellant,
Certain Underwriters at Lloyd's, et al.,
Intervenors-Appellants,
v.
The Glidden Company, &c., et al.,
Respondents.

Order reversed, with costs, motion by The Glidden Company n/k/a Akzo Nobel Paints LLC for summary judgment on its antisubrogation affirmative defense denied and case remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that court.

Opinion by Judge Abdus-Salaam.
Chief Judge DiFiore and Judges Pigott, Rivera, Stein and Fahey concur.
Judge Garcia took no part.

No. 61
The People &c.,
Respondent,
v.
Marino Serrano,
Appellant.

Order reversed and case remitted to the Appellate Term, Second Department, for consideration of the merits of the appeal to that court.
Opinion by Judge Fahey.
Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein and Garcia concur, Judge Rivera in a concurring opinion.

2 No. 56
Rodney Sherman,
Appellant,
v.
New York State Thruway Authority,
Respondent.

Order affirmed, with costs, in a memorandum.
Chief Judge DiFiore and Judges Pigott, Stein and Garcia concur.
Judge Rivera dissents in an opinion in which Judges Abdus-Salaam and Fahey concur.

MOTIONS

2 Mo. No. 2016-206
5706 Fifth Avenue, LLC,
 Respondent,
 v.
Chamoun Ketri, et al.,
 Defendants,
Sami Louzieh, &c.,
 Appellant.

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

2 Mo. No. 2016-497
In the Matter of Estrellita A.,
 Respondent,
 v.
Jennifer L.D.,
 Appellant.

Motion by Lawyers for Children 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. Three copies of the brief must be served and an original and nine copies filed within seven days. Judge Fahey took no part.

2 Mo. No. 2016-260
The People &c.,
 Respondent,
 v.
Rashawn Andrews,
 Appellant.

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

3 Mo. No. 2016-212
In the Matter of Anonymous, a Suspended
Attorney.

Committee on Professional Standards,
 Respondent;
Anonymous,
 Appellant.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order as confirmed a confidential letter of caution, denied; motion for leave to appeal otherwise dismissed upon the ground that the remainder of the Appellate Division order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.
Judge Stein took no part.

1 Mo. No. 2016-105
The Burlington Insurance Company,
Appellant,
v.
NYC Transit Authority, 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.

1 Mo. No. 2016-226
The Burlington Insurance Company,
Appellant,
v.
NYC Transit Authority, et al.,
Respondents.

Motion for leave to appeal granted.

1 Mo. No. 2016-267
Ruo Mei Cai,
Respondent,
v.
Victor Fai Lau,
Appellant.

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

4 Mo. No. 2016-170
Brandon William Gardner, &c., et al.,
Respondents,
v.
State of New York,
Appellant.

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

4 Mo. No. 2016-169
Peter E. Grevelding, Jr., &c.,
Respondent,
v.
State of New York,
Appellant.

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

4 Mo. No. 2016-396
Peter E. Greveling, Jr., &c.,
 Respondent,
 v.
State of New York,
 Appellant.

Motion for leave to appeal from the amended judgment of Supreme Court entered upon the October 2015 Appellate Division order dismissed upon the ground that the Appellate Division order, not the amended judgment, is the final appealable paper in this action (see CPLR 5611; Whitfield v City of New York, 90 NY2d 777 [1997]).
Judge Fahey took no part.

1 Mo. No. 2016-272
The People &c.,
 Respondent,
 v.
Javier Guaman,
 Appellant.

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

3 Mo. No. 2016-305
In the Matter of Albert Harriott,
 Appellant,
 v.
Anthony J. Anucci, &c., et al.,
 Respondents.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]). The prior motion for leave to appeal made at the Appellate Division was untimely (see Arthur Karger, Powers of the New York Court of Appeals § 12:3, at 436-437 [3d ed rev 2005]).

3 Mo. No. 2016-306
In the Matter of Albert Harriott,
 Appellant,
 v.
Michael Sheahan, &c.,
 Respondent.

Motion for leave to appeal dismissed as untimely (see CPLR 5513[b]). The prior motion for leave to appeal made at the Appellate Division was untimely (see Arthur Karger, Powers of the New York Court of Appeals § 12:3, at 436-437 [3d ed rev 2005]).

2 Mo. No. 2016-264
In the Matter of Regan U. Lally,
Appellant,
v.
Richard E. Aebly,
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.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2016-324
Leslie Karen Lariviere, et al.,
Appellants,
v.
New York City Transit Authority, et al.,
Respondents,
et al.,
Defendants.

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]; Butler v New York City Tr. Auth., 14 NY3d 909 [2010]).

2 Mo. No. 2016-308
George T. Maurice,
Appellant,
v.
Ann C. Maurice,
Respondent.

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

4 Mo. No. 2016-471
The People &c.,
Appellant,
v.
Jamell R. McCullough,
Respondent.

Motion by Innocence Project, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

3 Mo. No. 2016-270
Crystal Medina,
Appellant,
v.
State of New York,
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2016-325
NYCTL 2011-A Trust, et al.,
Plaintiffs,
v.
Da'Jue Properties, Inc.,
Appellant,
et al.,
Defendants.
Fay Capital Corp.,
Nonparty-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.

1 Mo. No. 2016-309
Precast Restoration Services, LLC,
Appellant,
v.
Global Precast, Inc.,
Respondent,
et al.,
Defendants.

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.

2 Mo. No. 2016-204
RW Holdings, LLC,
Appellant,
v.
Johanna Mayer, et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the January 2016 judgment sought to be appealed from does not finally determine the action within the meaning of the Constitution.

4 Mo. No. 2016-462
In the Matter of Brooke S.B.,
Respondent,
v.
Elizabeth A. C.C.,
Respondent.

Motion by New York State Bar Association for leave to appear amicus curiae on the appeal herein granted only to the extent that 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.

Judge Fahey took no part.

R. Thomas Rankin, Esq., Attorney for the
Child,
Appellant.

4 Mo. No. 2016-465
In the Matter of Brooke S.B.,
Respondent,
v.
Elizabeth A. C.C.,
Respondent.

R. Thomas Rankin, Esq., Attorney for the
Child,
Appellant.

4 Mo. No. 2016-487
In the Matter of Brooke S.B.,
Respondent,
v.
Elizabeth A. C.C.,
Respondent.

R. Thomas Rankin, Esq., Attorney for the
Child,
Appellant.

4 Mo. No. 2016-496
In the Matter of Brooke S.B.,
Respondent,
v.
Elizabeth A. C.C.,
Respondent.

R. Thomas Rankin, Esq., Attorney for the
Child,
Appellant.

2 Mo. No. 2016-290
SC, et al.,
Appellants,
v.
Monroe Woodbury Central School District, et
al.,
Respondents.

Motion by American Academy of Adoption
Attorneys, et al. for leave to file a brief amici curiae
on the appeal herein granted and the proposed brief
is accepted as filed.
Judge Fahey took no part.

Motion by Sanctuary for Families, 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.
Judge Fahey took no part.

Motion by Lawyers for Children 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. Three copies of the brief must be served and
an original and nine copies filed within seven days.
Judge Fahey took no part.

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

1 Mo. No. 2016-461
The People &c.,
Respondent,
v.
Charles Smith,
Appellant.

The People &c.,
Respondent,
v.
Tyrell Ingram,
Appellant.

The People &c.,
Respondent,
v.
Isma McGhee,
Appellant.

1 Mo. No. 2016-303
Osqugama F. Swezey, et al.,
Appellants,
v.
Merrill Lynch, Pierce Fenner & Smith Inc.,
Respondent,
New York City Department of Finance,
Respondent,
Philippine National Bank, et al.,
Intervenors-Respondents.

2 Mo. No. 2016-288
The People &c.,
Respondent,
v.
Julio Torres,
Appellant.

Motion by Legal Aid Society for leave to file a brief amicus curiae on the appeals 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.

Motion "for a writ of King's Bench" &c. dismissed upon the ground that it does not lie (see NY Const, art VI, § 3; CPLR 5519[c]).

Motion for leave to appeal denied.

1 Mo. No. 2016-344
In the Matter of Ming Tung, et al.,
Appellants,
v.
China Buddhist Association, et al.,
Respondents.

Motion for reargument denied.

1 Mo. No. 2016-289
In the Matter of Van Wagner
Communications, LLC,
Appellant,
v.
Board of Standards and Appeals of the City of
New York,
Respondent.

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

2 Mo. No. 2016-441
The People &c.,
Respondent,
v.
Phillip Wright,
Appellant.

Motion for assignment of counsel granted and Lynn
W. L. Fahey, Esq., Appellate Advocates, 111 John
Street, 9th Floor, New York, NY 10038 assigned as
counsel to the appellant on the appeal herein.