OCTOBER 27, 2005

CASES

4	No. 109 Cheryl Andrea, et al., Appellants, v. Arnone, Hedin, Casker, Kennedy and Drake, Architects and Landscape Architects, P.C. (Habiterra Associates), et al., Defendants, Tiede-Zoeller, Inc., Respondent. (Action No. 1) ---------- Mark Foster, et al., Appellants, v. Jamestown Public Schools, Tiede-Zoeller, Inc., Respondents, et al., Defendants. (Action No. 2)	Order affirmed, with costs. Opinion by Judge R.S. Smith. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo and Read concur.
3	No. 140 Marsha Maroney, Individually &c. of Mark Maroney, an Infant, Appellant, v. New York Central Mutual Fire Insurance Company, Respondent. (And a third-party action).	Order affirmed, with costs. Opinion by Judge Ciparick. Chief Judge Kaye and Judges G.B. Smith, Graffeo, Read and R.S. Smith concur. Judge Rosenblatt dissents and votes to reverse in an opinion.

4 No. 137
In the Matter of the Estate of
Mildred B. Murphy, Deceased.

Bonnie Gustin et al. &c.,
Petitioners;
Evelyn Beckman,
Respondent,
Connie Morral, et al.,
Appellants.

Order reversed, with costs to all parties appearing separately and filing separate briefs payable out of the estate, and matter remitted to Surrogate's Court, Steuben County, for further proceedings in accordance with the opinion herein.
Opinion by Judge Rosenblatt.
Chief Judge Kaye and Judges G.B. Smith, Ciparick, Graffeo and R.S. Smith concur.
Judge Read dissents and votes to affirm in an opinion.

1 No. 135
In the Matter of New York City
Asbestos Litigation.

Elizabeth Holdampf, et al.,
Respondents,
v.
A.C. & S., Inc., et al.,
Defendants,
The Port Authority of New York
and New Jersey,
Appellant.

Order reversed, with costs, order of Supreme Court, New York County, reinstated and certified question answered in the negative.
Opinion by Judge Read.
Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo and R.S. Smith concur.
Chief Judge Kaye took no part.

4 No. 192 SSM 20
Daniel B. Primeau,
Appellant,
v.
Town of Amherst and Dennis P.
Leising,
Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum.
Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

3-10 Mo. No. 788
In the Matter of Isidro Abascal,
Appellant,
v.
John Maczek, &c.,
Respondent.

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

2-12 Mo. No. 832
In the Matter of Anthony Anderson,
Appellant,
v.
Glenn S. Goord, &c., et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution. Motion for poor person relief dismissed as academic.

3-10 Mo. No. 882
In the Matter of Peter D. Barran,
Appellant,
v.
Department of Education of the State of New York, et al.,
Respondents.

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

Mo. No. 1078 SSD 55
In the Matter of Frank Brown,
Appellant,
v.
Glenn S. Goord, as Commissioner of Correctional Services,
Respondent.

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

3-10 Mo. No. 853
In the Matter of Cooke Center for Learning and Development,
Appellant,
v.
Richard P. Mills, &c. et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as affirmed Supreme Court's order denying appellant's motion to renew, dismissed upon the ground that such portion of the order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2-13 Mo. No. 799
In the Matter of James D. Coscette,
Appellant,
v.
Town of Wallkill,
Respondent.

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

2-10 Mo. No. 921
In the Matter of Croton Watershed Clean Water Coalition, Inc., et al.,
Appellants,
v.
New York City Department of Environmental Protection et al.,
Respondents.

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

1-10 Mo. No. 897
Thomas Cusanelli et al.,
Respondents,
v.
The New York City Transit Authority,
Appellant.

Motion for leave to appeal denied.

3-10 Mo. No. 876
In the Matter of Thomas Dallio,
Appellant,
v.
Anthony Annucci, &c.,
Respondent.

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

2-10 Mo. No. 854
Danna Construction Corp., et al.,
Respondents,
v.
Utica First Insurance Company,
Appellant,
et al.,
Defendant.

Motion for leave to appeal denied.

1-13 Mo. No. 732

In the Matter of Manuel D.,
A Person Alleged to be a
Juvenile Delinquent,
Respondent.

Presentment Agency,
Appellant.

Motion for leave to appeal denied.

4-14 Mo. No. 790

Sarah J. Denio and James S. Denio, &c.,
Respondents-Appellants,
v.
The State of New York,
Appellant-Respondent.

Motion and cross motion for leave to appeal granted.

2-10 Mo. No. 867

In the Matter of George Denton, Deceased.
G. Hallett Denton,
Respondent,
v.
Andrew A. Hyman, et al.,
Appellants,
et al.,
Respondents.

Motion for leave to appeal denied.

2-14 Mo. No. 758

In the Matter of Eastport Alliance, &c., et al.,
Respondents,
v.
Jackie Lofaro, &c., et al.,
Appellants,
H.T.L., LLC,
Respondent.

Motion for leave to appeal dismissed as untimely. The prior motion for leave to appeal made to the Appellate Division was untimely (see, Karger, Powers of the New York Court of Appeals 73, at 452 [3d ed]).

2-14 Mo. No. 769
In the Matter of Eastport Alliance, &c., et al.,
Respondents,
v.
Jackie Lofaro, &c., et al.,
Respondents,
H.T.L., LLC,
Appellant.

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

3-10 Mo. No. 901
The People &c. ex rel. William Figueroa,
Appellant,
v.
James J. Walsh, as Superintendent of Sullivan Correctional Facility,
Respondent.

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

1-10 Mo. No. 753
In the Matter of Christina G., A Person Alleged to be a Juvenile Delinquent,
Appellant.

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

1-14 Mo. No. 888
Francesco Guercio, et al.,
Appellants,
v.
Metlife Inc., &c.,
Respondent.

Metlife Inc., &c.,
Third-Party Plaintiff,
v.
One Source Facility Services, Inc.,
Third-Party Respondent.

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

4-13 Mo. No. 859
In the Matter of Stanley Hall,
Appellant,
v.
Town of Henderson,
Respondent.

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

3-10 Mo. No. 674
Timothy J. Hinlicky, &c.,
Appellant,
v.
David C. Dreyfuss, et al.,
Respondents.

Motion for leave to appeal granted.

2-10 Mo. No. 810
Gregg Joseph, d/b/a Alpine Meadows Excavating & Trucking,
Appellant,
v.
Joseph R. Iannace 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.

Mo. No. 1094 SSD 58
Marianne J. Kelly,
Respondent,
v.
John M. Kelly,
Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that it does not lie (see, CPLR 5601).

4-10 Mo. No. 805
The People &c.,
Respondent,
v.
Shawn Kennedy,
Appellant.

Motion for leave to appeal granted.

2-10 Mo. No. 850
In the Matter of Justine Sophia Lachmann,
Respondent,
v.
Thierry H. LeJemtel,
Appellant.

Motion for leave to appeal denied.

3-10 Mo. No. 893
In the Matter of Elvin Lebron,
Appellant,
v.
Michael McGinnis, &c.,
Respondent.

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

2-10 Mo. No. 811
John Liere, et al.,
Appellants,
v.
Wide Awake Farms, LLC et al.,
Respondents.

Motion, insofar as it seeks leave to appeal as against Wide Awake Farms, LLC, dismissed upon the ground that as to that party the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2-13 Mo. No. 794
Rita Lifshits,
Respondent,
v.
Variety Poly Bags et al.,
Appellants.

Motion for leave to appeal from the judgment entered upon the Appellate Division order dismissed upon the ground that the judgment is not the final appealable paper from which leave to appeal may be sought (see, CPLR 5611).

2-13 Mo. No. 862
Madison Equities, LLC,
Appellant,
v.
MZ Management Corp., et al.,
Respondents,
et al.,
Defendant.

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.

3-10 Mo. No. 900
In the Matter of John Mandala,
Appellant,
v.
Robert Dennison, as Chair of the New York State Board of Parole,
Respondent.

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

2-10 Mo. No. 881
Arturo Manzo et al.,
Respondents,
v.
Nadine Gross,
Appellant,
et al.,
Defendant.

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

4-10 Mo. No. 877
In the Matter of Vanessa Miller,
Appellant,
v.
Julie M. Orbaker and John C. Gaudu,
Respondents.

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

Mo. No. 757
Arax Minassian,
Respondent,
v.
Myron H. Temares et al.,
Appellants,
et al.,
Defendants.

Motion for leave to appeal denied.

Mo. No. 1089 SSD 57

In the Matter of Town of Montauk, Inc.,
Appellant,
v.
Hon. George E. Pataki, Esq., Governor of the State of New York, et al.,
Respondents.

Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Second Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (NY Const, art VI, 3[b][2], 5[b]; CPLR 5601 [b][2]).

2-12 Mo. No. 843

In the Matter of Geraldine Moss, et al.,
Appellants,
v.
Eliot Spitzer, &c., et al.,
Respondents.

Motion for leave to appeal denied.

2-13 Mo. No. 779

Enma Navedo-Levy, &c.,
Appellant,
v.
Methodist Hospital,
Defendant;
Commissioner of Department of Social Services of City of New York,
Nonparty-Respondent.

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

1- Mo. No. 895

In the Matter of City of New York, et al.,
Respondents,
v.
New York City Civil Service Commission,
Respondent,
Michael A. Ciacciullo,
Appellant.

In the Matter of Police Officer Michael A. Ciacciullo, &c.,
Appellant,
v.
Raymond W. Kelly, as Police Commissioner of the City of New York, et al.,
Respondents.

Motion for leave to appeal granted.

1-10 Mo. No. 896

In the Matter of New York City Asbestos Litigation

Anthony Tancredi et al.,
Appellants,
v.
A.C.& S., 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 actions within the meaning of the Constitution.
Chief Judge Kaye took no part.

2-11 Mo. No. 892

North Fork Bank,
Respondent,
v.
K. George Carvalho,
Defendant,
Donna Carvalho,
Appellant.

Donna Carvalho,
Appellant,
et al.,
Plaintiffs,
v.
New York Property Insurance Underwriters Association, et al.,
Defendants;
Weg and Myers, P.C.,
Nonparty-Respondent.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the actions within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3-10 Mo. No. 851

In the Matter of Marisabel Novillo,
Appellant,
v.
Board of Education of Madison Central School District, et al.,
Respondents.

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

2 Mo. No. 899

In the Matter of One Overlook Avenue Corp.,
Respondent,
v.
New York State Division of Human Rights,
Appellant.

Motion for leave to appeal denied.

1-10 Mo. No. 868
In the Matter of Neil Pessin et al.,
Appellants,
v.
New York State Division of Housing and Community Renewal,
Respondent,
Regina Metropolitan Co. Inc.,
Intervenor-Respondent.

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

1-10 Mo. No. 813
Michael Pierce,
Appellant,
v.
HSBC Mortgage Corporation (USA) et al.,
Respondents.

Motion for leave to appeal denied.

4-10 Mo. No. 836
In the Matter of Wayne Pluta,
Appellant,
v.
New York State Office of Children and Family Services, &c., et al.,
Respondents.

Motion for leave to appeal denied.

Mo. No. 1095 SSD 59
Pocantico Home & Land Company, LLC, et al.,
Appellants,
Bruce C. Edelstein, et al.,
Intervenors-Appellants,
v.
Union Free School District of the Tarrytowns, et al.,
Respondents.

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

2-14 Mo. No. 889

Rubin Reinoso,
Respondent,
v.
Ornstein Layton Management, Inc. et al.,
Defendants,
OL Miller Place, LLC,
Appellant.
(And a Third-Party Action.)

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.

1-10 Mo. No. 690

River Seafoods, Inc.,
Respondent,
v.
JPMorgan Chase Bank,
Appellant.

Motion for leave to appeal granted.

Mo. No. 1081 SSD 56

The People &c. ex rel. Javier Rivera,
Appellant,
v.
Calvin E. West, Superintendent of Elmira Correctional Facility, et al.,
Respondents.

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

1-10 Mo. No. 840

Lillian Roberts, &c., et al.,
Petitioners,
v.
City of New York, et al.,
Respondents.

Mark Rosenthal, &c. and Lillian Roberts, &c.,
Appellants,
v.
City of New York, et al.,
Respondents.

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

1-10 Mo. No. 858
Lillian Roberts, &c., et al.,
Appellants,
v.
City of New York, et al.,
Respondents.

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

(And Another Action.)

1-10 Mo. No. 857
Lillian Roberts, &c., et al.,
Appellants,
v.
City of New York, et al.,
Respondents.

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

Edna Williams, &c., et al.,
Appellants,
v.
City of New York, et al.,
Respondents.

2-14 Mo. No. 869
Peter Scarso,
Appellant,
v.
M.G. General Construction Corp., et al.,
Defendants,
M and G General Construction Corp., &c.,
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.

1-10 Mo. No. 778
In the Matter of 77 Realty, LLC, et al.,
Appellants,
v.
New York City Water Board, et al.,
Respondents.

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

3-11 Mo. No. 777

In the Matter of Lori Skelly,
Respondent,
v.
Lance Skelly,
Appellant.

Motion for leave to appeal denied.

1-14 Mo. No. 929

In the Matter of Jeffrey Solomon,
Respondent-Appellant,
v.
Patricia J. Lancaster, as Commissioner of Buildings of the City of New York,
Appellant-Respondent.

Motion and cross motion for leave to appeal denied.

2-13 Mo. No. 842

Harold Warren et al.,
Appellants,
v.
City of New York,
Respondent.

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