

May 02, 2013

CASES

2 No. 139 SSM 6

The People &c.,  
Respondent,

v.

Earl Bell, Jr.,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order modified by reducing defendant's conviction of depraved indifference murder in the second degree to manslaughter in the second degree and remitting to County Court, Orange County, for resentencing and, as so modified, affirmed (see People v Bussey, 19 NY3d 231 [2012]).  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

3 No. 65

In the Matter of Norman Bezio, &c.,  
Respondent,

v.

Leroy Dorsey,  
Appellant.

Order affirmed, without costs.  
Opinion by Judge Graffeo.  
Judges Read, Smith and Pigott concur.  
Chief Judge Lippman dissents and votes to reverse in an opinion in which Judge Rivera concurs.

3 No. 79

Robert Bloomer,  
Appellant,

v.

Christine M. Shauger,  
Respondent.

Order affirmed, with costs, and certified question not answered on the ground that it is unnecessary, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

3 No. 78

Karen Hastings et al.,  
Appellants,

v.

Laurier Sauve et al.,  
Respondents,

et al.,

Defendant.

Order reversed, with costs, defendants' motions for summary judgment denied, and certified question not answered on the ground that it is unnecessary.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur.

1                    No. 138 SSM 7  
Arpi Koulajian,  
    Appellant,  
    v.  
Tamara Smith, et al.,  
    Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. The Appellate Division correctly held that defendants were entitled to summary judgment. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

3                    No. 81  
The People &c.,  
    Respondent,  
    v.  
Christopher Oathout,  
    Appellant.

Order reversed and a new trial ordered. Opinion by Judge Pigott. Chief Judge Lippman and Judges Graffeo, Read and Rivera concur. Judge Smith dissents and votes to affirm, concluding that defendant received effective assistance of counsel for the reasons stated in the memorandum at the Appellate Division (90 AD3d 1418).

1                    No. 70  
Verizon New England, Inc.,  
    Appellant,  
    v.  
Transcom Enhanced Services, Inc.,  
    Respondent.

Order affirmed, with costs. Opinion by Judge Rivera. Chief Judge Lippman and Judges Graffeo, Read, Smith and Pigott concur.

**MOTIONS**

2                    Mo. No. 2013-299  
In the Matter of Jasminda Odette Agueda,  
                  Appellant,  
                  v.  
Joaquin Rodriguez,  
                  Respondent.

Motion for leave to appeal denied.

                          Mo. No. 2013-442  
Jeana Barenboim et al., &c.,  
                  Appellants,  
                  v.  
Starbucks Corporation,  
                  Respondent.

Motion by UNITE HERE! Local 100, Align:  
Alliance for a Greater New York et al. for leave to  
appear amici curiae on consideration of the certified  
questions herein granted only to the extent that the  
proposed brief is accepted as filed. Two copies of  
the brief must be served and nine copies filed within  
seven days.

                          Mo. No. 2013-474  
Jeana Barenboim et al., &c.,  
                  Appellants,  
                  v.  
Starbucks Corporation,  
                  Respondent.

Motion by The New York City Hospitality Alliance  
for leave to appear amicus curiae on consideration of  
the certified questions herein granted only to the  
extent that the proposed brief is accepted as filed.  
Two copies of the brief must be served and nine  
copies filed within seven days.

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Eugene Winans, et al., &c.,  
                  Appellants,  
Kennisha Lawrence,  
                  Plaintiff,  
                  v.  
Starbucks Corporation,  
                  Respondent.

3 Mo. No. 2013-318  
In the Matter of Sharon K. Bland,  
Appellant,  
v.  
Gellman, Brydges & Schroff,  
et al.,  
Respondents,  
Workers' Compensation Board,  
Respondent.  
(And Another Proceeding.)

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceedings within the meaning of the Constitution.

1 Mo. No. 2013-338  
Country-Wide Insurance Company,  
Appellant,  
v.  
Preferred Trucking Services Corp., et al.,  
Defendants,  
Filippo Gallina, et al.,  
Respondents.

Motion for leave to appeal granted.

1 Mo. No. 2013-388  
Elena G. De Madariaga,  
Appellant,  
v.  
Union Bancaire Privee et al.,  
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2013-463  
Theresa Devito,  
Appellant,  
v.  
Dennis Feliciano et al.,  
Respondents.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 Mo. No. 2013-277

Equity Now, Inc.,  
Respondent,

v.

Wall Street Mortgage Bankers, Ltd., &c.,  
Appellant,

Power Express Mortgage, Ltd.,  
et al.,

Defendants.

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

2 Mo. No. 2013-298

In the Matter of Executive Life Insurance  
Company of New York.

Superintendent of Financial Services, &c.,  
Respondent;

Jennifer Aracil Appling, et al.,  
Appellants;

National Organization of Life and Health  
Guaranty Association, &c.,

Nonparty-Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-285

Natasha Ferguson,  
Appellant,

v.

Dollar Rent A Car, Inc., et al.,  
Respondents,

et al.,

Defendant.

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

3 Mo. No. 2013-302

Roger Forbes,  
Appellant,

v.

State of New York,  
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. 2013-457  
The People &c.,  
Respondent,  
v.  
Oliverio Galindo,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2013-274  
The People &c. ex rel. Jamar Gilmore,  
Appellant,  
v.  
Harold D. Graham, &c.,  
Respondent.

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

1 Mo. No. 2013-343  
Golden City Commercial Bank,  
Plaintiff,  
v.  
207 Second Avenue Realty Corp., et al.,  
Defendants.

Motion for reargument denied.

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Michael G. Zapson, &c.,  
Nonparty-Respondent,  
v.  
Janet Chang,  
Nonparty-Appellant.

1 Mo. No. 2013-362  
In the Matter of Charles Goodacre,  
Appellant,  
v.  
Raymond Kelly, &c., et al.,  
Respondents.

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

3                    Mo. No. 2013-477  
The People &c.,  
    Appellant-Respondent,  
    v.  
Hazel E. Gordon,  
    Respondent-Appellant.

Motion for assignment of counsel granted and Aaron A. Louridas, Esq., 25 Egmont Court, Delmar, NY 12054 assigned as counsel to the respondent-appellant on the appeal herein.

1                    Mo. No. 2013-287  
In the Matter of Jordan Anthony H., &c.  
  
Melissa Ann S.,  
    Appellant,  
Leake and Watts Services, Inc.,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2013-291  
In the Matter of Sergio Hernandez,  
    Respondent,  
    v.  
The Office of the Mayor of the City of New  
York,  
    Appellant.

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

2                    Mo. No. 2013-292  
In the Matter of Esther Hershko,  
    Appellant,  
    v.  
Itzhak Hershko,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-317  
In the Matter of David Kaslow,  
    Respondent,  
    v.  
City of New York, et al.,  
    Appellants.

Motion for leave to appeal granted.

1                    Mo. No. 2013-221  
Landauer Limited,  
    Appellant,  
    v.  
Joe Monani Fish Co., Inc.,  
    Respondent.

Motion for leave to appeal granted.

2                    Mo. No. 2013-301  
The People &c. ex rel. Calvin Lee,  
    Appellant,  
    v.  
William A. Lee, &c.,  
    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.

1                    Mo. No. 2013-300  
In the Matter of Raymond Lewis,  
    Appellant,  
    v.  
Hon. Bonnie Wittner, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2013-275  
Gerald Lieblich, et al.,  
    Appellants,  
    v.  
Fron Nahzi, &c.,  
    Respondent.

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

1                    Mo. No. 2013-281  
Diego McDonald,  
    Appellant,  
    v.  
Louise McBain, &c.,  
    Respondent.

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



Mo. No. 2013-276  
In the Matter of Amber M.,  
Respondent,  
v.  
Brian W.,  
Appellant.

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

1 Mo. No. 2013-340  
Nassau County,  
Appellant,  
v.  
Metropolitan Transportation Authority, et al.,  
Respondents.

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

2 Mo. No. 2013-325  
In the Matter of State of New York,  
Respondent,  
v.  
S. Mc. (Anonymous),  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2013-313  
In the Matter of Theophilus Y. Ojuola,  
Appellant,  
v.  
New York State Division of Human Rights,  
Respondent.

Motion for reargument of motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Rivera took no part.

3 Mo. No. 2013-322  
In the Matter of Kristine L. Overbaugh,  
Appellant,  
v.  
Francisco A. Schettini,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-280  
John Peters,  
Respondent,  
v.  
The New School,  
Appellant.

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. 2013-250  
Lynette Phillip,  
Appellant,  
v.  
Sterling Home Care, Inc., et al.,  
Respondents.

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

1 Mo. No. 2013-466  
Nandkumar Ramkumar,  
Appellant,  
v.  
Grand Style Transportation Enterprises Inc.,  
et al.,  
Respondents.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

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Grand Style Transportation Enterprises Inc.,  
et al., Respondents,  
v.  
Georgina D. Castillo,  
Third-Party Respondent.

2                    Mo. No. 2013-329  
The People &c.,  
    Respondent,  
    v.  
Aristides Santana,  
    Appellant.

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

4                    Mo. No. 2013-307  
In the Matter of Derek Sloane,  
    Appellant,  
    v.  
Brian Fischer, &c.,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2013-288  
United States Fidelity & Guaranty Company,  
et al.,  
    Respondents,  
    v.  
American Re-Insurance Company, et al.,  
    Appellants,  
et al.,  
    Defendants.

Motions for reargument denied.  
Judge Rivera took no part.

3                    Mo. No. 2013-269  
In the Matter of Donna Veeder, &c.,  
    Appellant,  
    v.  
New York State Police Department et al.,  
    Respondents.  
Workers' Compensation Board,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-316  
Russell Wagner,  
    Appellant,  
    v.  
Janice Wody, et al.,  
    Respondents.

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