

December 12, 2017

**CASES**

1                    No. 121  
Geoffrey Desrosiers, &c.,  
    Respondents,  
    v.  
Perry Ellis Menswear, LLC, et al.,  
    Appellants.

Order affirmed, with costs, and certified question answered in the affirmative.  
Opinion by Judge Fahey.  
Chief Judge DiFiore and Judges Rivera and Feinman concur.  
Judge Stein dissents in an opinion, in which Judges Garcia and Wilson concur.

1                    No. 128  
In the Matter of The Friends of P.S. 163, Inc.,  
et al.,  
    Appellants,  
    v.  
Jewish Home Lifecare, Manhattan,  
    Respondent,  
New York State Department of Health, et al.,  
    Respondents.

Order affirmed, with costs, and certified question not answered as unnecessary.  
Opinion by Judge Rivera.  
Chief Judge DiFiore and Judges Stein, Fahey, Garcia, Wilson and Feinman concur.

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In the Matter of Daisy Wright, et al.,  
    Appellants,  
    v.  
New York State Department of Health, et al.,  
    Respondents,  
Jewish Home Lifecare, Manhattan,  
    Respondent.

1                    No. 39  
Nomura Home Equity Loan, Inc., Series  
2006-FM2, by HSBC Bank USA, National  
Association, solely in its capacity as Trustee,  
et al.,  
                  Respondents,  
                  v.  
Nomura Credit & Capital, Inc.,  
                  Appellant.  
(And Three Other Actions.)

Order, insofar as appealed from, modified, without costs, in accordance with the opinion herein and, as so modified, affirmed and certified question answered in the negative.  
Opinion by Judge Stein.  
Judges Fahey, Wilson, Centra and Balkin concur.  
Judge Feinman dissents in part in an opinion, in which Judge Rivera concurs in part in a separate dissenting opinion.  
Chief Judge DiFiore and Judge Garcia took no part.

1                    No. 146 SSM 30  
Jessica Torres,  
                  Respondent,  
                  v.  
Irene G. Cerngul, M.D., et al.,  
                  Appellants,  
New York City Health and Hospitals  
Corporation, et al.,  
                  Defendants.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. Defendants Irene G. Cerngul, M.D. and Bronx-Lebanon Hospital Center did not preserve for our review their argument concerning the admissibility of the expert affidavit submitted by plaintiff in opposition to their motion for summary judgment. Moreover, defendant Bronx-Lebanon Hospital Center has abandoned any other argument. On this record, triable questions of fact preclude summary judgment in favor of defendants. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Wilson and Feinman concur.  
Judge Garcia dissents and votes to reverse and answer the certified question in the negative, for reasons stated in the dissenting opinion by Justice Andrias at the Appellate Division (146 AD3d 509, at 512-522).

1                    No. 122  
Christopher Vasquez, &c.,  
    Respondent,  
    v.  
National Securities Corporation,  
    Appellant,  
Mark Goldwasser,  
    Defendant.

Order affirmed, with costs, and certified question  
answered in the affirmative.  
Opinion by Judge Fahey.  
Chief Judge DiFiore and Judges Rivera and Feinman  
concur.  
Judge Stein dissents in an opinion, in which Judges  
Garcia and Wilson concur.

## MOTIONS

1                    Mo. No. 2017-1183  
In the Matter of Jonas Aponte,  
    Respondent,  
    v.  
Shola Olatoye, &c., et al.,  
    Appellants.

Motion by AARP et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

                          Mo. No. 2017-1120  
The People &c.,  
    Respondent,  
    v.  
Steven Berrezueta,  
    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.

2                    SSD 64  
In the Matter of Michael Brown,  
    Appellant,  
    v.  
Roberto Velez, &c., et al.,  
    Respondents.

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

1                    Mo. No. 2017-814  
Deadco Petroleum,  
    Appellant,  
    v.  
Trafigura AG et al.,  
    Respondents.

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

3                    Mo. No. 2017-1008  
In the Matter of Elaine DeVera, &c., et al.,  
    Petitioners,  
Susana Taveras, &c., et al.,  
    Respondents,  
    v.  
Maryellen Elia, &c., et al.,  
    Appellants.

Motions for leave to appeal granted.

1                    Mo. No. 2017-1058  
In the Matter of Gloria A. T. S. E., &c.  
  
Adrian D. E.,  
    Appellant,  
Good Shepherd Services,  
    Respondent.

Motion for leave to appeal denied.

1                    SSD 63  
In the Matter of State of New York,  
    Respondent,  
    v.  
Keith F.,  
    Appellant.

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

2                    Mo. No. 2017-1192  
The People &c.,  
    Respondent,  
    v.  
Jude Francis,  
    Appellant.

Motion by Youth Represent 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.  
The brief must be submitted in digital format within  
seven days.

3                    SSD 69  
The People &c. ex rel. Cedric Golston,  
    Appellant,  
    v.  
Michael Kirkpatrick &c.,  
    Respondent.

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

1                    Mo. No. 2017-1168  
Karen Gravano,  
    Appellant,  
    v.  
Take-Two Interactive Software, Inc. et al.,  
    Respondents.

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Lindsay Lohan,  
    Appellant,  
    v.  
Take-Two Interactive Software, Inc., et al.,  
    Respondents.

2                    Mo. No. 2017-1041  
In the Matter of Daria S. H.-A.

New Alternatives for Children, Inc.,  
    Respondent;  
Yolanda H.,  
    Appellant.  
(And Two Other Proceedings.)

1                    Mo. No. 2017-757  
The People &c.,  
    Respondent,  
    v.  
Hollis Hosear,  
    Appellant.

4                    Mo. No. 2017-1114  
International Union of Painters & Allied  
Trades, District Council No. 4, &c., et al.,  
    Respondents,  
    v.  
New York State Department of Labor, et al.,  
    Appellants.

Motion by Jarryd Huntley 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

Motion for leave to appeal denied.

Motion for leave to appeal denied.

Motion by New York State Building & Construction Trades Council, AFL-CIO for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1                    SSD 70  
In the Matter of Kevin McK.,  
                  Appellant,  
          v.  
Elizabeth A. E.,  
                  Respondent.

Appeal, insofar as taken from that portion of the Appellate Division order that affirmed the dismissal of so much of the petition that sought enforcement of a visitation order, dismissed by the Court sua sponte, upon the ground that such portion of the order does not finally determine the proceeding within the meaning of the Constitution; appeal otherwise dismissed by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

2                    Mo. No. 2017-1018  
MidFirst Bank,  
                  Respondent,  
          v.  
Joseph Ajala,  
                  Appellant,  
et al.,  
                  Defendants.

Motion for reargument of motion for leave to appeal denied.  
Motion for a stay dismissed as academic.

3                    SSD 66  
The People &c. ex rel. Gary H. Moore,  
                  Appellant,  
          v.  
Superintendent of Cossackie Correctional  
Facility,  
                  Respondent.

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

4                    SSD 54  
The People &c.,  
                  Appellant,  
          v.  
Kevin Reeves,  
                  Respondent.

Appeal dismissed, by the Court sua sponte, as moot.

1                    Mo. No. 2017-1139  
The People &c.,  
    Respondent,  
    v.  
William Rodriguez,  
    Appellant.

Motion for assignment of counsel granted and Michael J. Hutter, Esq., c/o Powers & Santola, LLP, 39 North Pearl Street, Albany NY 12207-2844 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2017-1057  
In the Matter of Marisol Rodriguez,  
    Appellant,  
    v.  
Shola Olatoye, &c.,  
    Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2017-977  
Robert R. Sprole III,  
    Respondent,  
    v.  
Linda S. Sprole,  
    Appellant;  
Richard B. Alderman, et al.,  
    Respondents.  
(And Two Other Related Matters.)

Motion, insofar as it seeks leave to appeal from the July 2014 Appellate Division order, dismissed upon the ground that it does not lie, appellant having previously moved in the Court of Appeals for leave to appeal (24 NY3d 906 [2014]) from the same Appellate Division order from which she currently seeks leave to appeal (see Selinger v Selinger, 90 NY2d 842 [1997]); motion, insofar as it seeks leave to appeal from the July 2017 Appellate Division order, dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion, insofar as it seeks leave to appeal from the remaining orders, otherwise dismissed for failure to demonstrate timeliness as required by Rules of the Court of Appeals (see 22 NYCRR 500.22[b][2]).  
Judge Stein took no part.



3                    SSD 67  
In the Matter of St. Lawrence County Support  
Collection Unit, &c.,  
                  Respondent,  
          v.  
Robert G. Bowman,  
                  Appellant.  
(And Another Related Proceeding.)

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the proceedings within the meaning of the Constitution.

4                    SSD 65  
Dawn Stefaniak,  
                  Plaintiff,  
          v.  
NFN Zulkharnain,  
                  Appellant.  
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Roberta L. Reedy, as Administrator of the  
Estate of Kevin M. Reedy, Deceased,  
                  Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that simultaneous appeals do not lie to the Appellate Division and the Court of Appeals, unless within 20 days appellant, if he be so advised, serves upon all parties and files in this Court a notice that he has abandoned his appeal to the Appellate Division and stipulates for the withdrawal of that appeal (see Parker v Rogerson, 35 NY2d 751, 753-754 [1974]).  
Judge Fahey took no part.

1                    Mo. No. 2017-1070  
U.S. Bank National Association, &c.,  
                  Respondent,  
          v.  
DLJ Mortgage Capital, Inc.,  
                  Appellant.

Motion by Ameriquet Mortgage Company for leave to intervene denied.  
Judges Wilson and Feinman took no part.

1                    Mo. No. 2017-1184  
The People &c.,  
                  Respondent,  
          v.  
Reginald Wiggins,  
                  Appellant.

Motion by JustLeadershipUSA 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

1                    Mo. No. 2017-1199  
The People &c.,  
    Respondent,  
    v.  
Reginald Wiggins,  
    Appellant.

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, an original and nine copies filed, and the brief submitted in digital format within seven days.

                    Mo. No. 2017-1060  
In the Matter of the Hon. Lurlyn A.  
Winchester, a Justice of the Monroe Town  
Court, Orange County.

Motion for reconsideration denied.

2                    Mo. No. 2017-976  
The People &c. ex rel. Aminie Woolworth,  
&c.,  
    Appellant,  
    v.  
Department of Corrections, &c.,  
    Respondent.

Motion for leave to appeal dismissed upon the ground that relator has been released from custody and, therefore, his liberty is no longer restrained to such a degree as to entitle him to the extraordinary writ of habeas corpus (see People ex rel. Wilder v Markley, 26 NY2d 648 [1970]).

4                    SSD 68  
The People &c. ex rel. Diane Word,  
    Appellant,  
    v.  
State of New York, et al.,  
    Respondents.

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