

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

-----X
Jeffrey Bolton and Tina Bolton,
Plaintiffs-Respondents,

-against-

M-2349
Index No. 108271/07

RCT Construction Corp., etc., et al.,
Defendants,

-and-

Accurate Electrical,
Defendant-Appellant.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about January 12, 2011 (mot. seq. no. 009),

Now, upon reading and filing the stipulation of the parties hereto, filed May 13, 2011, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the June 2011 Term, is withdrawn in accordance with the aforesaid stipulation.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

-----x

In the Matter of the Application of
Jose Berrios,

Petitioner

For a Judgment, etc.,

-against-

John B. Rhea, etc.,

Respondent.

-----x

M-2161 (DC #2)
M-2411
Index No. 400671/10

An Article 78 proceeding to review a determination of respondent having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about July 15, 2010,

And said proceeding having having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 19, 2011, pursuant to Rule 600.12(c) of said Rules of Practice,

And respondent having moved for dismissal of the aforesaid proceeding for failure to timely perfect (M-2411),

Now, upon reading and filing the papers with respect to the motion, and upon the Court's own motion (M-2161 [DC #3]) it is,

It is ordered that the motions to dismiss the proceeding are granted unless the proceeding is perfected on or before September 6, 2011 for the November 2011 Term of Court, and counsel is directed to so perfect.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Ambrosia De Los Santos,
Plaintiff-Appellant,

-against-

M-1651
Index No. 15971/06

Amsterdam Apartments Manager, LLC.,
etc., et al.,
Defendants-Respondents.

-----X
(And a Third-Party Action)
-----X

Plaintiff-appellant having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 1, 2011 (Appeal No. 4384),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of granting reargument of the aforesaid order and, upon reargument, the decision and order of this Court entered on March 1, 2011, is recalled and vacated and a new decision and order is substituted therefor. (See Appeal No. 4384, decided simultaneously herewith.) The motion, to the extent it seeks leave to appeal to the Court of Appeals, is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Sheila Abdus-Salaam, Justices.

-----X
MCC Development Corporation,
Plaintiff-Appellant,

-against-

M-1621
Index No. 101141/06

Daniel Perla, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on February 10, 2011 (Appeal No. 4239-4239A),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice
Angela M. Mazzaelli
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----X
In the Matter of

Hamzah P., Anwaar P.,
also known as Anwaar F.,
Halimah P., and Sumaiyah P.,
also known as Sumiyah P.,

Dependent Children Under 18 Years
of Age Alleged to be Abused and/or
Neglected Under Article 10 of the
Family Court Act.

- - - - -
Administration for Children's
Services,
Petitioner-Respondent,

M-1966
Docket Nos. NN-19785-6/10
NN-375-77/10
NN-33684/10

Tashara M. F.,
Respondent-Appellant.

- - - - -
Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Attorney for the Children.

-----X

Respondent-appellant mother having moved for leave to prosecute, as a poor person, the purported appeal from an order to show cause of the Family Court, New York County, entered on or about April 25, 2011, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied, the purported appeal is sua sponte dismissed as taken from a non-appealable paper.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. Catterson
Diane T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Turk Eximbank-Export Credit Bank of
Turkey, etc.,

Plaintiff-Respondent,

-against-

M-987
Index No. 603570/07

Ilham Bicakcioglu, et al.,

Defendants-Appellants,

Dolores Shuttle, et al.,

Defendants.
-----X

Defendants-appellants having moved for reargument of the decision and order of this Court entered on February 15, 2011 (Appeal No. 4256),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Karla Moskowitz
Rolando T. Acosta
Sallie Manzanet-Daniels, Justices.

-----X

In the Matter of a Support Proceeding
Under Article 4 of the Family Court Act.

Tonya A.,
Petitioner-Respondent,

-against-

M-1072
M-1618
Docket No. F17620-04/05A

Hal H. H.,
Respondent-Appellant.

-----X

An appeal having been taken from orders of the Family Court, Bronx County, entered on or about November 24, 2010,

And respondent-appellant having moved for leave to prosecute said appeal as a poor person, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for a stay of all proceedings, including a stay of incarceration directed by an order of said Court entered on or about April 4, 2011, pending hearing and determination of said appeal, and for related relief (M-1072),

And respondent-appellant having moved, by separate motion, for a stay of all proceedings pending hearing and determination of the aforesaid appeal (M-1618),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that both motions are denied in all respects, and the interim relief granted by an order of a Justice of this Court on April 6, 2011, is vacated.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,
Respondent,

-against- **M-1089**
Ind. No. 9068/98

Robert Jackson,
Defendant-Appellant.
-----X

Defendant having renewed his motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about July 22, 1999, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Steven M. Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. (212)577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,

Respondent,

-against-

M-1726
Ind. No. 3990/99

Messiah Avent,

Defendant-Appellant.
-----X

An appeal having been taken to this Court from the judgment of **resentence** of the Supreme Court, New York County, rendered on or about February 6, 2009,

And the Center of Appellant Litigation (Mark W. Zeno, of counsel), counsel for defendant-appellant, having moved for dismissal of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed, as moot.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1987
Case No. 54832C/09

David Felix,
Defendant-Appellant.

-----X

Defendant having moved for an extension of time in which to file a notice of appeal from a judgment of the Supreme Court, Bronx County, rendered on or about February 7, 2011, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the notice of appeal as timely filed and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Application of
Shirley Parker,
Petitioner,

For a Judgment Pursuant to Article
78 of the CPLR,

M-1721
Index No. 104406/09

-against-

Gladys Carrion, Commissioner, New York
State Office of Children and Family
Services, et al.,
Respondents.

-----X

An Article 78 proceeding to review a determination of respondents, having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about November 30, 2009,

And petitioner having moved for leave to prosecute the proceeding as a poor person, upon the original record and reproduced petitioner's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the proceeding to be heard on the original record and upon a reproduced petitioner's brief, on condition that petitioner serve one copy of such brief upon the attorney for the respondents and files 8 copies of such brief, together with the original record, with this Court. Petitioner is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of a Proceeding for
Custody and/or Visitation Under
Article 6 of the Family Court Act.

Roxanne R.,
Petitioner-Appellant,

M-1819
Docket No. V-10259/07

-against-

Luis A. F., and Administration for
Children's Services-Bronx,
Respondents-Respondents.

Steven Banks, Esq.,
Attorney for the Child.

-----X
An appeal having been taken from the order of the Family Court, Bronx County, entered on or about November 20, 2009, and said appeal having been perfected,

And Steven Banks, Esq., attorney for the child, having moved for an order dismissing the aforesaid appeal as moot due to the subject child's adoption,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied, without prejudice to raising the issue on appeal.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding
David B. Saxe
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,

-against-
Rockefeller Auguste,

M-1978
Ind. No. 4458/08

Defendant.
-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about October 5, 2009, for leave to prosecute the appeal as a poor person, on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied in its entirety.
(CPL 460.30)

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Application of
Detective Romeo Baloy, N.Y.C.P.D.
Ret.,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

M-1980
Index No. 110568/09

-against-

Raymond Kelly, Police Commissioner
of the City of New York,
Respondent-Respondent.

-----X

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from an order and judgment of the Supreme Court, New York County, entered on or about July 23, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
New York Nightlife,
Plaintiff-Appellant,

-against-

M-2017
Index No. 603740/07

Wagner Davis, P.C, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about January 26, 2010 (mot. seq. no. 003),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding
David B. Saxe
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,

Respondent,

-against-

M-1954
Ind. No. 4445N/08

William Paulet,

Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from a judgment of the Supreme Court, New York County, rendered on or about May 5, 2010, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the notice of appeal as timely filed. The motion, to the extent it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a detailed notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the appeal.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,

-against-
James Roberts,
Defendant.

M-1696
Ind. No. 3266/08

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about April 16, 2009, for leave to prosecute the appeal as a poor person, on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied in all respects.
(CPL 460.30)

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 17, 2012.

Present - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1846A
Ind. No 2681/09

Kevin Blackwood,
Defendant-Appellant.

-----X

An order of this Court having been entered on March 17, 2011 (M-620) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 2, 2010, and assigning Steven Banks, Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of assigned counsel Steven Banks, Esq., as counsel to prosecute defendant's appeal, and substituting retained counsel Audrey A. Thomas, Esq. To prosecute the appeal. The poor person relief previously granted is otherwise continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later. The order of this Court entered on June 28, 2011 (M-1846) is hereby recalled and vacated.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1847
Ind. No. 6292/06

James Brown,
Defendant-Appellant.

-----X

Defendant-appellant having moved for leave to file a pro se supplemental brief in connection with an appeal from a judgment of the Supreme Court, New York County, rendered on or about September 12, 2008, for a copy of the trial transcripts and for an enlargement of time in which to file said pro se supplemental brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied, without prejudice to renewal after counsel perfects appeal. Sua Sponte, enlarge the time in which to perfect the appeal to the October 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Peter Tom, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X

In the Matter of

Keyanna Selena L. and Tyienna L.,

Dependent Children Under 18 Years of Age Pursuant to §384-b of the Social Services Law of the State of New York.

Administration for Children's Services,

Petitioners-Respondents,

M-1427

Docket Nos. B16565-66/09

Twanya McK.,

Respondent-Appellant.

Steven Banks, Esq., The Legal Aid Society, Juvenile Rights Division, Attorney for the Children.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, New York County, entered on or about March 8, 2011, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Andrew Baer, Esq., 299 Broadway, Suite 1415, New York, NY 10007, Telephone No. (212) 233-0318, as

counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor¹ **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTER:



CLERK

¹Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Peter Tom, Justice Presiding,
David Friedman
Rolando T. Acosta
Diane T. Renwick
Leland G. DeGrasse, Justices.

-----x
Dennis Kantor, etc., et al.,
Plaintiffs-Respondents,

-against-

Dr. David James,
Defendant-Appellant,

M-2268
Index No. 111069/07

Dr. Monica Peacock,
Defendant.

-----x

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 27, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X

Harvey 1390, LLC, et al.,
Petitioners-Landlords-Respondents,

-against-

M-6068
Index No. 570356/10

Matthew Bodenheim,
Respondent-Tenant,

-and-

John Cassarino,
Respondent-Tenant-Appellant.

-----X

Respondent-tenant John Cassarino having moved for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about September 17, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted. Appellant shall file two copies of the pre-argument statement and of this order with the Clerk of the Appellate Term with proof of service, pursuant to Section 600.17 of the Rules of this Court.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Augustin Rivera,

Plaintiff-Appellant,

-against-

M-1827
Index No. 305934/08

DYA, Inc., et al.,

Defendants-Respondents.
-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about January 11, 2010,

And defendants-respondents having moved to dismiss the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted and the appeal is dismissed.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----x
In the Matter of a Probate Proceeding,

The Will of

Rocky H. Akoi, also known as
Hiroaki Aoki,
Deceased.

M-2482
Surrogate's Court
File No. 2604-2008

- - - - -
Keiko Ono Aoki,
Petitioner-Respondent,

Kana Aoki Nootenboom, et al.,
Objectants-Appellants.

-----x

An appeal having been taken to this court from the Probate Decree of the Surrogate's Court, New York County, entered on or about September 1, 2010,

And objectants-appellants having moved for an enlargement of time to perfect the appeal until 60 days after disposition of a pending appeal in the Court of Appeals entitled *Will of Rocky Aoki, etc.*, presently sub judice,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It I ordered that the motion is granted to the extent of enlarging the time to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
Rolando T. Acosta
Diane T. Renwick
Leland G. DeGrasse, Justices.

-----X

The People of the State of New York,
Respondent,

M-1737

-against-

Ind. No. 6073/08

Sergei Kuramtsov, also known as Sergei
Khramtsov,
Defendant-Appellant.

-----X

Defendant-appellant, in connection with an appeal taken from the judgment of the Supreme Court, New York County, rendered on or about January 21, 2009, having moved for leave to file a pro se supplemental brief and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of directing defendant to serve and file 8 copies of his pro se supplemental brief on or before October 30, 2011 for the December 2011 Term, to which Term the appeal is adjourned. The Clerk of the Court is directed to forward to the Warden at the State correctional facility wherein defendant is incarcerated a transcript of the minutes relating to defendant's appeal, said transcript to be made available to appellant and returned by appellant to this Court when submitting the pro se supplemental brief hereto. The appeal will not be heard unless and until all material furnished to appellant has been returned.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
Rolando T. Acosta
Diane T. Renwick
Leland G. DeGrasse, Justices.

-----X
Wadsworth Ventura Associates 367 LLC,
Petitioner-Landlord-Respondent,

-against-

M-1594

Index No. 570204/10

Carmen Frias,
Respondent-Tenant-Appellant.

-----X

Respondent-tenant-appellant having moved for leave to appeal to this Court from the order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about February 4, 2011, for leave to prosecute said appeal as a poor person, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent it seeks leave to appeal from the Appellate Term, is granted. Appellant shall file two copies of the pre-argument statement and of this order with the Clerk of the Appellate Term with proof of service, pursuant to Section 600.17 of the Rules of this Court. So much of the motion which seeks leave to prosecute the appeal as a poor person is granted to the extent of permitting the appeal to be heard upon the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and files 8 copies of such brief, together with the original record, with this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


CLERK

CORRECTED ORDER - July 1, 2011

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Angela M. Mazzaelli, Justice Presiding,
Diane T. Renwick
Leland G. DeGrasse
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1405
Ind. No. 843/08

Matthew Keschner
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about March 15, 2011, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

CORRECTED ORDER - July 1, 2011

(M-1405)

-2-

June 28, 2011

Robert S. Dean, Esq., Center for Appellate Litigation,
74 Trinity Place, 11th Floor, New York, New York 10006, Telephone
No. 212-577-2523, is assigned as counsel for defendant-appellant for
purposes of the appeal. The time within which appellant shall perfect
this appeal is hereby enlarged until 120 days from the date of filing
of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Richard T. Andrias, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Diane T. Renwick
Nelson S. Román, Justices.

-----x
Grant Brown, etc., et al.,

Plaintiff-Appellant,

-against-

David Kamlet, M.D., et al.,

Defendants-Respondents.
-----x

M-2308
Index No. 101487/06

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 4, 2010 (mot. seq. nos. 007, 010),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
James M. Catterson
Dianne T. Renwick
Leland G. DeGrasse, Justices.

-----X
Krystal Paulino,
Plaintiff-Appellant,

-against-

M-1842
Index No. 303166/08

Christian Rodriguez, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about July 14, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Helen E. Freedman
Rosalyn H. Richter
Nelson S. Román, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Jamall Simmons,
Defendant-Appellant.

M-1822

Ind. No. 1992/06
Case No. 18288C/06

-----X

Defendant having moved for leave to prosecute, as a poor person, appeals from a judgment of the Supreme Court, Bronx County, rendered on or about December 13, 2010 and from the judgment of **resentence** of the same Court, rendered on or about February 15, 2011, for leave to have the appeals heard upon the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeals to be heard upon the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence and of **resentence**.

The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Helen E. Freedman
Rosalyn H. Richter
Nelson S. Román, Justices.

-----X
In the Matter of

Jean T.,

M-1844

A Person Alleged to Be a Juvenile
Delinquent,

Docket No. D188/11

Respondent-Appellant.

-----X

Respondent-appellant having moved for leave to prosecute the appeal from an order of the Family Court, Bronx County, entered on or about April 8, 2011, as a poor person, for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Section 35 of the Judiciary Law and Section 1120 of the Family Court Act, George E. Reed, Jr., 222 Mamaroneck Ave., White Plains, New York 10605, Telephone No. (914) 946-5000, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the State of New York from funds available therefor;¹ **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) directing appellant to perfect

¹Service of appellant's brief upon respondent shall include assigned counsel's copy of the transcript.

this appeal in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTER:

A handwritten signature in cursive script, appearing to read "Susan R. Jones", is written above a horizontal line.

CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Diane T. Renwick
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----x
Saverio L. Bruscano,
Petitioner-Appellant,

For a Judgment, etc.,

M-2526
Index No. 110244/09

-against-

Raymond W. Kelly, etc., et al.,
Respondents-Respondents.

-----x

Petitioner-appellant having moved for an enlargement of time to perfect the appeal from the judgment of the Supreme Court, New York County, entered on or about June 30, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time to perfect the appeal to the November 2011 Term.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding
David Friedman
Helen E. Freedman
Rosalyn H. Richter
Nelson S. Román, Justices.

-----X

In the Matter of

Nhyashanti A., also known as
Anton C.,

A Dependent Child Under 18 Years
of Age Alleged to be Abused and/or
Neglected Under Article 10 of the
Family Court Act.

M-1343
Docket No. NN-30229/09

- - - - -
Administration for Children's Services,
Petitioner-Respondent,

Evelyn B.,
Respondent-Appellant.

- - - - -
Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Attorney for the Child.

-----X

Respondent-appellant mother having moved for leave to prosecute, as a poor person, the appeal deemed to be from an order of fact-finding and an order of disposition of the Family Court, Bronx County, entered on or about September 20, 2010 and February 18, 2011, respectively, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of
(1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Frederic P. Schneider, Esq., 40 Wall Street, 28th Floor, New York, New York 10005, Telephone No. 646-512-5730, as counsel for purposes of prosecuting the appeal;
(2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the

record on appeal, the cost thereof to be charged against the City of New York from funds available therefor¹ **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTER:



CLERK

¹Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding,
David Friedman
Helen E. Freedman
Rosalyn H. Richter
Nelson S. Román, Justices.

-----X
In the Matter of the Application of

Elizabeth Marrero,
Petitioner,

For a Judgment Pursuant to Article
78 of the CPLR,

M-1825
Index No. 400135/10

-against-

New York City Housing Authority,
Respondent.

-----X

An Article 78 proceeding to review a determination of respondent, having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about October 1, 2010,

And petitioner-appellant having moved for leave to prosecute the proceeding as a poor person, upon the original record and reproduced petitioner's brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the proceeding to be heard on the original record and upon a reproduced petitioner's brief, on condition that petitioner-appellant serves one copy of such brief upon the attorney for the respondent-respondent and files 8 copies of such brief, together with the original record, with this Court. Petitioner is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding
John W. Sweeny, Jr.
James M. Catterson
Dianne T. Renwick
Sallie Manzanet-Daniels, Justices.

-----X

Thomas Donato,
Plaintiff-Respondent,

-against-

Aron D. Rovner, M.D.,
Defendant-Appellant,

M-1366
Index No. 8670/07

-and-

Long Beach Medical Center,
Defendant.

-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from the judgment of the Supreme Court, Bronx County, entered on or about June 10, 2010, and for other relief,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties dated May 15, 2011, and correspondence from Mauro Lilling Naparty LLP (Timothy J. O'Shaughnesy, of counsel), counsel for defendants-appellants, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT - Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X

Francisca Montan,
Plaintiff-Appellant,

-against-

M-950
Index No. 7944/05

Saint Vincent's Catholic Medical Center,
et al.,
Defendants,

St. Vincent's Midtown Hospital, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on February 3, 2011 (Appeal No. 4177),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
Rolando T. Acosta
Leland G. DeGrasse
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

-----X
Samuel Cosentino,
Plaintiff-Appellant,

-against-

M-1890
Index No. 121296/03

Sullivan Papain Block McGrath &
Cannavo, P.C.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about May 24, 2010 (mot. seq. no. 009),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
Rolando T. Acosta
Leland G. DeGrasse
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

-----X
Empire Pile, Inc., now known as
Empire Pile & Foundations, Inc.,
Plaintiff-Respondent,

-against-

M-1928
Index No. 603597/09

Kiska Development Group, LLC,
Defendant-Appellant,

PHH Owner LLC, et al.,
Defendants.

-----X

Defendant-appellant Kiska Development Group, LLC having moved for an enlargement of time in which to perfect the appeal from order of the Supreme Court, New York County, entered on or about June 17, 2010 (mot. seq. no. 002),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----x
Jersey Narcisse, et al.,

Plaintiffs-Respondents,

-against-

M-2347
Index No. 113961/07

Donald S. Pollard, et al.,

Defendants-Appellants.
-----x

Defendants-appellants having moved for an enlargement of time to perfect the appeal from the order of the Supreme Court, New York County, entered on or about August 16, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the November 2011 Term.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
Janet Chang, as assignee of 207 Second Avenue Realty Corp.,

Plaintiff-Respondent,

-against-

M-2560
Index No. 2242/86

Laraine Botsacos, as Executrix of the Estate of Thomas Cartelli,

Defendant-Appellant.
-----X

Defendant-appellant having moved for an enlargement of time in which to perfect the appeal from the judgment of the Supreme Court, New York County, entered on or about August 10, 2010,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to on or before September 6, 2011 for the November 2011 Term, with no further enlargements to be granted. Upon failure to so perfect, an order dismissing the appeal may be entered ex parte provided that plaintiff-respondent serves a copy of this order upon defendant-appellant within 10 days after the date of entry hereof.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----x
Wells Fargo Bank Northwest, N.A.,
etc.,

Plaintiff-Respondent,

-against-

US Airways, Inc.,

Defendant-Appellant.
-----x

M-2374
Index No. 650500/09

An appeal having been taken to this Court from an order of the Supreme Court, New York County, entered on or about March 21, 2011,

And defendant-appellant having moved for a stay of the damages hearing pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 28, 2011.

Present - Hon. John W. Sweeny, Jr., Justice Presiding,
James M. Catterson
Karla Moskowitz
Diane T. Renwick
Rosalyn H. Richter, Justices.

-----X

Maryann Imperato, et al.,
Plaintiffs-Respondents,

-against-

M-1246
Index No. 110727/07

The Mount Sinai Medical Center,
et al.,
Defendants-Appellants.

-----X

Defendants-appellants having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on March 1, 2011 (Appeal No. 3776),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent it seeks reargument, is denied. The motion, to the extent it seeks leave to appeal to the Court of Appeals, is granted and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Did this Court properly affirm the Supreme Court's order vacating the preclusion order against plaintiff, or does *Gibbs (Gibbs v St. Barnabas Hospital, 16 NY3d 74 [2010])* now mandate submission of an affidavit of merit (as well as reasonable excuse) for default of any type at any point in litigation, not just for failure to submit a bill of particulars or a complaint which were the defaults at issue in *Gibbs, Fiore (Fiore v Galang, 64 NY2d 999 [1985])*, and the authorities cited therein?"

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion.

ENTER:

A handwritten signature in black ink, appearing to read "Susan R. Jones", written in a cursive style. The signature is positioned above a horizontal line.

CLERK