

May 08, 2014

CASES

1                    No. 83  
The People &c.,  
    Respondent-Appellant,  
    v.  
Vincent Barone,  
    Appellant-Respondent.

Order modified by remitting to the Appellate Division, First Department, for further proceedings in accordance with the opinion herein and, as so modified, affirmed.  
Opinion by Judge Graffeo.  
Chief Judge Lippman and Judges Read, Smith, Pigott and Rivera concur.  
Judge Abdus-Salaam took no part.

1                    No. 81  
CDR Creances S.A.S., &c.,  
    Respondent,  
    v.  
Maurice Cohen,  
    Appellant,  
et al.,  
    Defendants.

Order modified, without costs, by remitting to Supreme Court, New York County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed.  
Opinion by Judge Rivera.  
Chief Judge Lippman and Judges Graffeo, Read, Smith and Pigott concur.  
Judge Abdus-Salaam took no part.

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CDR Creances S.A.S., &c.,  
    Respondent,  
    v.  
Leon Cohen, &c., et al.,  
    Appellants,  
et al.,  
    Defendants.

2                    No. 64  
Clemente Bros. Contracting Corp., et al.,  
    Appellants,  
    v.  
Aprile Hafner-Milazzo, &c.,  
    Defendant,  
Capital One, N.A.,  
    Respondent.

Order modified, without costs, by remitting to Supreme Court, Suffolk County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Rivera and Abdus-Salaam concur.  
Judge Pigott dissents in part in an opinion in which Judge Smith concurs.

1                    No. 82  
The People &c.,  
    Respondent-Appellant,  
    v.  
V. Reddy Kancharla,  
    Appellant-Respondent.

Order modified by remitting to the Appellate Division, First Department, for further proceedings in accordance with the opinion herein and, as so modified, affirmed.  
Opinion by Judge Graffeo.  
Chief Judge Lippman and Judges Read, Smith, Pigott and Rivera concur.  
Judge Abdus-Salaam took no part.

1                    No. 75  
In the Matter of the State of New York,  
    Respondent,  
    v.  
John S.,  
    Appellant.

Order affirmed, without costs.  
Opinion by Judge Abdus-Salaam.  
Judges Graffeo, Read and Pigott concur.  
Judge Rivera dissents in an opinion in which Chief Judge Lippman and Judge Smith concur, Judge Smith in a separate dissenting opinion in which Chief Judge Lippman and Judge Rivera concur.

1                    No. 76  
In the Matter of State of New York,  
    Respondent,  
    v.  
Charada T.,  
    Appellant.

Order affirmed, without costs.  
Opinion by Judge Abdus-Salaam.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

**MOTIONS**

3                    Mo. No. 2014-272  
In the Matter of Maureen Apjohn, &c.,  
    Respondent,  
    v.  
David E. Lubinski,  
    Appellant.  
(And Another Related Proceeding.)

Motion for leave to appeal denied.

1                    Mo. No. 2013-608  
The People &c.,  
    Respondent-Appellant,  
    v.  
Vincent Barone,  
    Appellant-Respondent.

Motion to dismiss the People's cross appeals denied.  
Judge Abdus-Salaam took no part.

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The People &c.,  
    Respondent-Appellant,  
    v.  
V. Reddy Kancharla,  
    Appellant-Respondent.

                    Mo. No. 2014-291  
In the Matter of Sabrina Campbell,  
    Respondent,  
    v.  
Margaret January,  
    Respondent,  
Bennie Carter, Sr.,  
    Appellant.

Motion for leave to appeal denied.

3                   SSD 27  
In the Matter of Benjamin V. R. C., a  
Disbarred Attorney.

Committee on Professional Standards,  
Respondent,  
Benjamin V. R. C.,  
Appellant.

3                   Mo. No. 2014-462  
Cooperstown Holstein Corporation,  
Appellant,  
v.  
Town of Middlefield,  
Respondent.

Mo. No. 2014-468  
In the Matter of Coudert Brothers LLP,  
Debtor.

Development Specialists, Inc.,  
Respondent-Appellant;  
K&L Gates LLP et al.,  
Appellants-Respondents;  
Akin Gump Strauss Hauer & Feld LLP, et al.,  
Appellants-Respondents.

2                   Mo. No. 2014-457  
Allison Gammons,  
Respondent,  
v.  
City of New York, et al.,  
Appellants.

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

Motion by American Planning Association et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

Motion by American Bar Association for leave to file a brief amicus curiae on consideration of the certified questions herein denied. Judge Smith took no part.

Motion by New York State Trial Lawyers Association 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 and an original and nine copies filed within seven days.

2                    Mo. No. 2014-458  
The People &c.,  
    Appellant,  
    v.  
Mark Garrett,  
    Respondent.

Motion by District Attorneys Association of the State of New York for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

                          Mo. No. 2014-450  
In the Matter of Thelen LLP.  
  
Yann Geron, as Chapter 7 Trustee of the  
Estate of Thelen LLP,  
    Appellant,  
    v.  
Seyfarth Shaw LLP,  
    Respondent.

Motion by New York State Bar Association et al. for leave to file a brief amici curiae on consideration of the certified questions herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

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In the Matter of Coudert Brothers LLP,  
    Debtor.  
Development Specialists, Inc.,  
    Respondent-Appellant,  
K&L Gates LLP et al.,  
    Appellants-Respondents,  
Akin Gump Strauss Hauer & Feld LLP, et al.,  
    Appellants-Respondents.

                          Mo. No. 2014-469  
In the Matter of Thelen LLP.  
  
Yann Geron, as Chapter 7 Trustee of the  
Estate of Thelen LLP,  
    Appellant,  
    v.  
Seyfarth Shaw LLP,  
    Respondent.

Motion by Liquidating Trustee for the Dewey & LeBoeuf Liquidation Trust 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.

Mo. No. 2014-493  
In the Matter of Thelen LLP.

Yann Geron, as Chapter 7 Trustee of the  
Estate of Thelen LLP,  
Appellant,  
v.  
Seyfarth Shaw LLP,  
Respondent.

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In the Matter of Coudert Brothers LLP,  
Debtor.  
Development Specialists, Inc.,  
Respondent-Appellant,  
K&L Gates LLP et al.,  
Appellants-Respondents,  
Akin Gump Strauss Hauer & Feld LLP, et al.,  
Appellants-Respondents.

2 Mo. No. 2014-243  
Mary Harris,  
Appellant,  
v.  
Gilbert Pitts, et al.,  
Respondents,  
et al.,  
Defendants.  
Norman Dodd,  
Nonparty Appellant.

2 Mo. No. 2014-304  
Hannah Lieberman,  
Appellant,  
v.  
Adam Lieberman,  
Respondent.

Motion by Attorneys' Liability Assurance Society, Inc., A Risk Retention Group for leave to file a brief amicus curiae on consideration of the certified questions herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

Motion, insofar as Norman Dodd seeks leave to appeal, dismissed upon the ground that he is not a party aggrieved (CPLR 5511); motion for leave to appeal otherwise denied.

Motion for reargument of motion for leave to appeal denied.

4                    Mo. No. 2014-240  
Eileen Malay,  
    Appellant,  
    v.  
City of Syracuse, et al.,  
    Respondents.

Motion for leave to appeal granted.

3                    Mo. No. 2014-280  
In the Matter of Denise Martineau,  
    Respondent,  
    v.  
Larry Ashline et al., &c.,  
    Appellants,  
et al.,  
    Respondent.  
Workers' Compensation Board,  
    Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed the Workers' Compensation Board determination denying the application for reconsideration and/or full Board review, 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.

1                    Mo. No. 2014-412  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
    Respondents,  
    v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
    Appellants.

Motion by Wilfredo Lopez et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days. Judge Rivera took no part.

1                    Mo. No. 2014-451  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
    Respondents,  
    v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
    Appellants.

Motion by Gillian E. Metzger et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days. Judge Rivera took no part.

1 Mo. No. 2014-453  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by National Association of County and City  
Health Officials et al. for leave to file a brief amici  
curiae on the appeal herein granted and the proposed  
brief is accepted as filed. Three copies of the brief  
must be served and an original and nine copies filed  
within seven days.  
Judge Rivera took no part.

1 Mo. No. 2014-454  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by The Business Council of New York State,  
Inc. et al. for leave to file a brief amici curiae on the  
appeal herein granted and the proposed brief is  
accepted as filed.  
Judge Rivera took no part.

1 Mo. No. 2014-455  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by Washington Legal Foundation et al. for  
leave to appear amici curiae on the appeal herein  
granted only to the extent that the proposed brief is  
accepted as filed. Three copies of the brief must be  
served and an original and nine copies filed within  
seven days.  
Judge Rivera took no part.

1 Mo. No. 2014-456  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by Maria del Carmen Arroyo et al. for leave  
to file a brief amici curiae on the appeal herein  
granted and the proposed brief is accepted as filed.  
Three copies of the brief must be served and an  
original and nine copies filed within seven days.  
Judge Rivera took no part.



1 Mo. No. 2014-464  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by New York State Conference of the  
National Association for the Advancement of  
Colored People 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.  
Judge Rivera took no part.

1 Mo. No. 2014-465  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by The Chamber of Commerce of the United  
States of America et al. for leave to file a brief amici  
curiae on the appeal herein granted and the proposed  
brief is accepted as filed.  
Judge Rivera took no part.

1 Mo. No. 2014-466  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by Paul A. Diller et al. for leave to file a  
brief amici curiae on the appeal herein granted and  
the proposed brief is accepted as filed. Three copies  
of the brief must be served and an original and nine  
copies filed within seven days.  
Judge Rivera took no part.

1 Mo. No. 2014-467  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

Motion by National Alliance for Hispanic Health et  
al. for leave to file a brief amici curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed. Three copies of the brief must be served and  
an original and nine copies filed within seven days.  
Judge Rivera took no part.

1 Mo. No. 2014-492  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
Respondents,

v.

The New York City Department of Health  
and Mental Hygiene, et al.,  
Appellants.

2 SSD 21  
Michael Nicholson, &c. et al.,  
Appellants,

v.

Incorporated Village of Garden City, et al.,  
Respondents.

SSD 28  
The People &c.,  
Respondent,  
v.  
Phillip Nieves,  
Appellant.

1 Mo. No. 2014-262  
Nancy Perez, et al.,  
Respondents,  
v.  
Jane M. Fitzgerald, D.C., et al.,  
Appellants.

Motion by Eric Lane for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Judge Rivera took no part.

Appeal from the December 2013 Appellate Division order dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. Appeal from the March 2014 judgment dismissed without costs, by the Court sua sponte, upon the ground that the judgment is not the final paper in this action (see CPLR 5611).

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no civil appeal lies from the order of the Supreme Court entered in this criminal proceeding (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution (see Cuadrado v New York City Tr. Auth., 14 NY3d 748 [2010]).

2                    SSD 26  
Ruth M. Pollack,  
    Appellant,  
    v.  
Arthur J. Cooperman, et al.,  
    Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. Chief Judge Lippman and Judge Abdus-Salaam took no part.

1                    SSD 25  
In the Matter of Ruth Marie Pollack,  
    Appellant,  
    v.  
Clerk of the Court Matthew G. Kiernan, &c.,  
et al.,  
    Respondents.

Appeal, insofar as taken from the April 2013 Appellate Division order, dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved; appeal, insofar as taken from the remaining five orders, dismissed without costs, by the Court sua sponte, upon the ground that it does not lie (see NY Const, art VI, § 3[b]; CPLR 5601). Chief Judge Lippman and Judge Abdus-Salaam took no part.

4                    Mo. No. 2014-293  
The People &c. ex rel. Walter Roache,  
    Appellant,  
    v.  
Donald Sawyer, &c.,  
    Respondent.

Motion, insofar as it seeks leave to appeal from the Appellate Division order affirming the dismissal of the habeas corpus proceeding, dismissed as untimely (see CPLR 5513[b]); motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument, dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

3 Mo. No. 2014-275  
The People &c. ex rel. Carlos Rodriguez,  
Appellant,  
v.  
Joseph T. Smith, &c.,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no substantial  
constitutional question is directly involved.  
Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2014-221  
The People &c.,  
Respondent,  
v.  
Clive Scott,  
Appellant.

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

3 Mo. No. 2014-295  
In the Matter of Mark A. Sterne,  
Appellant.  
Commissioner of Labor,  
Respondent.

Motion for reconsideration of this Court's February  
13, 2014 dismissal order denied.

1 Mo. No. 2014-301  
In the Matter of David Sweedler, et al.,  
Appellants,  
v.  
DSJS, Inc.,  
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2014-325  
The People &c.,  
Respondent,  
v.  
Paul Thompson,  
Appellant.

Motion for reargument denied.

3 Mo. No. 2014-437  
In the Matter of Mark S. Wallach, as Chapter  
7 Trustee for Norse Energy Corp. USA,  
Appellant,  
v.  
Town of Dryden et al.,  
Respondents.

Motion by Community Environmental Defense Council, Inc. 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 and an original and nine copies filed within seven days.

3 Mo. No. 2014-452  
In the Matter of Mark S. Wallach, as Chapter  
7 Trustee for Norse Energy Corp. USA,  
Appellant,  
v.  
Town of Dryden et al.,  
Respondents.

Motion by Barbara Lifton for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

3 Mo. No. 2014-463  
In the Matter of Mark S. Wallach, as Chapter  
7 Trustee for Norse Energy Corp. USA,  
Appellant,  
v.  
Town of Dryden et al.,  
Respondents.

Motion by American Planning Association et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

3 Mo. No. 2014-485  
In the Matter of Mark S. Wallach, as Chapter  
7 Trustee for Norse Energy Corp. USA,  
Appellant,  
v.  
Town of Dryden et al.,  
Respondents.

Motion by Dryden Resources Awareness Coalition 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 and an original and nine copies filed within seven days.

4                    Mo. No. 2014-289  
Adam L. Walton,  
    Appellant,  
    v.  
Strong Memorial Hospital, et al.,  
    Respondents,  
et al.,  
    Defendants.

Motion for leave to appeal granted.

3                    SSD 29  
In the Matter of Udi Ehud Yohanan,  
    Appellant,  
    v.  
John B. King, as Commissioner of Education  
of the 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.