

November 21, 2017

CASES

1 No. 67
Eileen Bransten, &c., et al.,
 Respondents,
 v.
State of New York,
 Appellant.

Judgment reversed, without costs, plaintiffs' motion for summary judgment denied, and judgment granted in favor of defendant declaring Civil Service Law § 167(8) does not violate the Compensation Clause of the New York State Constitution (NY Const, art VI, § 25[a]).

Opinion Per Curiam.

Judges Rivera, Fahey, Garcia, Peradotto and Mulvey concur.

Judge Dillon concurs in result in an opinion, in which Judge Wilson concurs in a separate opinion.

Chief Judge DiFiore and Judges Stein and Feinman took no part.

4 No. 144 SSM 31
The People &c.,
 Respondent,
 v.
Phillip A. Dodson,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to County Court, Monroe County, for further proceedings in accordance with the memorandum herein.

Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

No. 119

In the Matter of World Trade Center Lower
Manhattan Disaster Site Litigation.

Stanislaw Faltynowicz, et al.,
Appellants,
State of New York,
Intervenor-Appellant,
v.
Battery Park City Authority, et al.,
Respondents.

Santiago Alvear,
Appellant,
State of New York,
Intervenor-Appellant,
v.
Battery Park City Authority,
Respondent.

Peter Curley et al.,
Appellants,
State of New York,
Intervenor-Appellant,
v.
Battery Park City Authority,
Respondent.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, first certified question answered in the negative and second certified question, as reformulated, answered in accordance with the opinion herein.

Opinion by Judge Feinman.

Chief Judge DiFiore and Judges Rivera, Stein, Fahey and Garcia concur, Judge Rivera in a concurring opinion.

Judge Wilson concurs in a separate concurring opinion.

2 No. 56
In the Matter of Jesse Friedman,
 Appellant,
 v.
Kathleen M. Rice, &c.,
 Respondent.

Order reversed, with costs, and matter remitted to Supreme Court, Nassau County, for further proceedings in accordance with the opinion herein. Opinion by Judge Rivera. Judges Stein, Fahey, Feinman and Peters concur. Judge Whalen dissents in part in an opinion, in which Judge Garcia concurs. Chief Judge DiFiore and Judge Wilson took no part.

3 No. 145 SSM 24
The People &c.,
 Respondent,
 v.
Joseph W. Kislawski,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and amended violation of probation petition dismissed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

1 No. 143 SSM 29
Henry T. Lau,
 Appellant,
 v.
Margaret E. Pescatore Parking, Inc. et al.,
 Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, as limited by plaintiff's letter submission on the appeal (see section 500.11[f]), reversed, with costs to plaintiff against defendant Margaret E. Pescatore Parking, Inc., and motion for summary judgment of defendant Margaret E. Pescatore Parking, Inc. denied. On this record, triable issues of fact preclude summary judgment in favor of defendant Margaret E. Pescatore Parking, Inc. Judges Rivera, Stein, Fahey and Wilson concur. Judge Garcia dissents and votes to affirm, insofar as appealed from, in a memorandum, in which Chief Judge DiFiore and Judge Feinman concur.

4 No. 116
The People &c.,
Respondent,
v.
Leroy Savage Smith,
Appellant.

Order reversed and a new trial ordered, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

MOTIONS

4 Mo. No. 2017-968

In the Matter of James Adams,
Appellant,

v.

New York State Department of Corrections
and Community Supervision,
Respondent.

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

2 Mo. No. 2017-975

The People &c.,
Respondent,

v.

Vincente Alvarez,
Appellant.

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

2 Mo. No. 2017-932

In the Matter of Fernando A. Batista,
Appellant,

v.

Rashina Mocktar,
Respondent.

Motion, insofar as it seeks leave to appeal from the
Appellate Division order denying reargument,
dismissed upon the ground that such order does not
finally determine the proceeding within the meaning
of the Constitution; motion for leave to appeal
otherwise denied.

1 Mo. No. 2017-960

Danielle Bitton, also known as Danielle
Biton,

Appellant,

v.

H.S.B.C., Katherine Alexander, UFT, et al.,
Respondents.

Motion for leave to appeal dismissed upon the
ground that this Court does not have jurisdiction to
entertain this motion for leave to appeal from the
order of the Appellate Division entered in an action
commenced in Civil Court of the City of New York
(NY Const, art VI, § 3[b][7]; CPLR 5602).
Motion for poor person relief dismissed as academic.

1 Mo. No. 2017-959
Crystal Biton, also known as Saphyre
Redford, and Danielle Biton,
 Appellants,
 v.
State Farm Insurance Company,
et al.,
 Respondents.

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

3 Mo. No. 2017-941
In the Matter of Margaret Campise,
 Appellant.
Commissioner of Labor,
 Respondent.

Motion for leave to appeal dismissed as untimely
(CPLR 5513[b]; Eaton v State of New York, 76
NY2d 824 [1990])
Motion for poor person relief dismissed as academic.

2 Mo. No. 2017-949
The People &c.,
 Respondent,
 v.
William Cook,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2017-958
Troy Dancy,
 Appellant,
 v.
John J. Seymour, et al.,
 Respondents.

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

1 SSD 62
Alan S. Pearce and Joel A. Levin, as
Successor Trustees under the Shari Lynn
Goldstein Trust,
 Respondents,
 v.
Linda Lipetz,
 Appellant.

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

3 Mo. No. 2017-957
Shirley He,
 Appellant,
 v.
Realty USA et al.,
 Defendants,
Roman Brusilovsky et al.,
 Respondents.

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

2 Mo. No. 2017-981
Richard Holihan et al.,
 Appellants,
 v.
Town of Orangetown,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2017-944
In the Matter of Howlands Lake Partners,
L.P.,
 Appellant,
 v.
Town of Dover, et al.,
 Respondents;
Dover Union Free School District,
 Intervenor-Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2017-946
In the Matter of Robert C. Laity,
 Appellant,
 v.
State of New York et al.,
 Respondents,
et al.,
 Respondents.

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.

3 Mo. No. 2017-961
Francis Legac et al., &c.,
 Appellants,
 v.
South Glens Falls Central School District et
al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2017-965
Florence Sisto Loscalzo, &c.,
 Appellant,
 v.
507-509 President Street Tenants Association
Housing Development Fund Corporation, et
al.,
 Respondents.

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

1 Mo. No. 2017-951
Luxor Capital Group, L.P., et al.,
 Appellants,
 v.
The Seaport Group LLC et al.,
 Respondents.
(And a Third-Party Action)

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

3 Mo. No. 2017-986
The People &c.,
 Respondent,
 v.
Paul D. Middlemiss,
 Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2017-998
Miranda Holdings, Inc.,
 Respondent,
 v.
Town Board of Town of Orchard Park,
 Appellant.

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

1 Mo. No. 2017-1033
Sara Myers et al.,
 Plaintiffs,
Eric A. Seiff, et al.,
 Appellants,
 v.
Eric Schneiderman, &c.,
 Respondent,
et al.,
 Defendants.

Motion for reargument denied.
Chief Judge DiFiore and Judge Feinman took no
part.

2 Mo. No. 2017-849
In the Matter of Helisse Palmore, et al.,
 Appellants,
 v.
Board of Education of Hempstead Union Free
School District, et al.,
 Respondents.

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

2 Mo. No. 2017-985
Sheldon Rosenthal, &c.,
 Appellant,
 v.
MDX Medical, Inc., &c.,
 Respondent.

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

2 Mo. No. 2017-966
In the Matter of Lavon S.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2017-974
Andrew Siegel,
 Appellant,
 v.
Albertus Magnus High School et al.,
 Respondents;
New City Baseball Association, Ltd., &c.,
Third-Party Defendant-Respondent.

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

1 Mo. No. 2017-931
STS Partners Fund, LP et al.,
 Appellants,
 v.
Deutsche Bank Securities, Inc. et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal as against Wells Fargo Bank, N.A., dismissed upon the ground that as to that defendant the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2 SSD 60
In the Matter of Darren E. Thomas,
 Appellant,
 v.
Town of Oyster Bay, et al.,
 Respondents,
et al.,
 Respondent.

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

1 Mo. No. 2017-990
Nina Tokhtaman, &c.,
 Respondent,
 v.
Human Care, LLC,
 Appellant,
et al.,
 Defendants.

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. 2017-1053
Nina Tokhtaman, &c.,
 Respondent,
 v.
Human Care, LLC,
 Appellant,
et al.,
 Defendants.

Motion by the New York State Association of Health
Care Providers, et al. for leave to appear amici curiae
on the motion for leave to appeal herein granted and
the brief is accepted as filed.

2 Mo. No. 2017-947
The People &c.,
 Respondent,
 v.
Jonathan Torres,
 Appellant.

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

3 Mo. No. 2017-950
In the Matter of Richard D. Tucker,
 Appellant,
 v.
City of Plattsburgh Fire Department et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

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

3 Mo. No. 2017-980
In the Matter of Joseph Vidal,
 Appellant,
 v.
Anthony J. Annucci, &c. et al.,
 Respondents.

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

4 Mo. No. 2017-885
Robert Weichert et al.,
 Appellants,
 v.
Kenneth Plumadore, et al.,
 Respondents.

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

2 Mo. No. 2017-979
David Yarom, et al.,
 Appellants,
 v.
Poliform S.P.A.,
 Respondent.

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

1 Mo. No. 2017-984
Jian-Guo Yu, et al.,
 Plaintiffs,
 v.
Greenway Mews Realty L.L.C., et al.,
 Defendants.

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

Greenway Mews Realty L.L.C.,
 Third-Party Respondent,
Little Rest Twelve, Inc.,
 Third-Party Plaintiff,
 v.
UAD Group,
 Third-Party Appellant.