

September 5, 2017

**CASES**

3                    No. 133 SSM 20

The People &c.,  
    Respondent,

v.

Douglas R. Every,  
    Appellant.

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

1                    No. 132 SSM 17

Frank Valente et al.,  
    Respondents,

v.

Lend Lease (US) Construction LMB, Inc., et  
al.,

    Appellants,

et al.,

    Defendants.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, plaintiffs' motion for partial summary judgment on liability pursuant to Labor Law § 240(1) denied, and certified question answered in the negative, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur. Judge Feinman took no part.

## MOTIONS

1                    Mo. No. 2017-724  
In the Matter of Oliver A.,  
                  Appellant,  
                  v.  
Diana Pina B.,  
                  Respondent.

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

1                    Mo. No. 2017-863  
In the Matter of Jonas Aponte,  
                  Respondent,  
                  v.  
Shola Olatoye, &c., et al.,  
                  Appellants.

Motion by Letitia James, &c., 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.

1                    Mo. No. 2017-823  
The People &c.,  
                  Respondent,  
                  v.  
Princesam Bailey,  
                  Appellant.

Motion for assignment of counsel granted and Christina A. Swarns, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2017-581  
In the Matter of Aliyah B.,  
                  Appellant,  
                  v.  
Taliby K. et al.,  
                  Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2017-611  
In the Matter of Cerenithy B., et al., &c.

Ecksthine B.,  
Respondent,  
Christian B.,  
Appellant,  
Good Shepherd Services,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Motion for a stay dismissed as academic.  
Judge Feinman took no part.

1 Mo. No. 2017-696  
In the Matter of Sydney A.B., &c.

Felicia M.,  
Appellant,  
et al.,  
Respondent;  
Catholic Guardian Services,  
Respondent,  
et al.,  
Petitioner.

Motion for leave to appeal denied.

1 Mo. No. 2017-733  
In the Matter of Kyriaki Borekas,  
Appellant,

v.  
New York City Department of Housing  
Preservation and Development, et al.,  
Respondents.

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

2 Mo. No. 2017-769  
The People &c.,  
Respondent,

v.  
Quinn Britton,  
Appellant.

Motion for poor person relief granted.

4 Mo. No. 2017-550  
In the Matter of Christian C.-B. et al.

Livingston County Department of Social  
Services,  
Respondent;  
Christopher V.B.,  
Appellant,  
Renee E.C.,  
Respondent.

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

4 Mo. No. 2017-603  
In the Matter of Christian C.-B. et al.

Livingston County Department of Social  
Services,  
Respondent;  
Christopher V.B.,  
Respondent,  
Renee E.C.,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2017-751  
Robert J. Congel, et al., &c.,  
Respondents,  
v.  
Marc A. Malfitano,  
Appellant.

Motion by The Real Estate Roundtable, 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.

4 Mo. No. 2017-678  
The People &c.,  
Respondent,  
v.  
Preston S. Daigler,  
Appellant.

Motion for an extension of the time within which to  
apply for permission to appeal pursuant to CPL  
460.20 granted and motion papers treated as a timely  
CPL 460.20 application.

2 Mo. No. 2017-873  
The People &c.,  
Respondent,  
v.  
Emmanuel Diaz,  
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2017-822  
The People &c.,  
Appellant,  
v.  
Frederick Diaz,  
Respondent.

Motion for poor person relief granted.

2 SSD 41  
Directional Lending, LLC,  
Respondent,  
v.  
Marie Guerrero, &c.,  
Appellant,  
et al.,  
Defendants.

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.

4 Mo. No. 2017-522  
Angelo A. Ferrara,  
Respondent,  
v.  
Peaches Cafe LLC, et al.,  
Defendants,  
COR Ridge Road Company, LLC, &c.,  
Appellant.

Motion for leave to appeal granted.

2                    Mo. No. 2017-765  
Wells Fargo Bank, N.A.,  
    Respondent,  
    v.  
Marie-Ange Fleurant, &c.,  
    Appellant,  
et al.,  
    Defendants.

Motion for leave to appeal dismissed as untimely  
(see CPLR 5513[b]).

                    Mo. No. 2017-789  
The People &c.,  
    Respondent,  
    v.  
Mary Anne Grady Flores,  
    Appellant.

Motion by Reporters Committee for Freedom of the  
Press, 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.

                    Mo. No. 2017-887  
The People &c.,  
    Respondent,  
    v.  
Mary Anne Grady Flores,  
    Appellant.

Motion by Daniel Finlay, et al. for leave to file a  
brief amici curiae on the appeal herein granted and  
the proposed brief is accepted as filed. One copy of  
the brief must be served within seven days.

3                    Mo. No. 2017-647  
In the Matter of FMC Corporation,  
    Respondent,  
    v.  
New York State Department of  
Environmental Conservation,  
    Appellant.

Motion to strike portions of the record and  
appellant's brief denied.

4 Mo. No. 2017-763  
The People &c.,  
Respondent,  
v.  
Lawrence P. Frumusa,  
Appellant.

Motion for reargument denied.  
Motion for other relief dismissed upon the ground  
that the Court of Appeals does not have jurisdiction  
to entertain it (see NY Const, art VI, § 3).  
Judge Feinman took no part.

2 Mo. No. 2017-854  
The People &c.,  
Respondent,  
v.  
Sean Garvin,  
Appellant.

Motion by National Association of Criminal Defense  
Lawyers et al. for leave to appear amici curiae on the  
appeals 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.

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The People &c.,  
Respondent,  
v.  
Phillip Wright,  
Appellant.

3 Mo. No. 2017-801  
In the Matter of Miguel Gonzalez,  
Respondent-Appellant,  
v.  
Anthony J. Annucci, &c.,  
Appellant-Respondent.

Motion for poor person relief granted.

1 Mo. No. 2017-846  
In the Matter of Ryszard Grajko,  
Appellant,  
v.  
City of New York, et al.,  
Respondents.

Motion by New York State Trial Lawyers  
Association for leave to file a submission amicus  
curiae on the appeal herein granted and the proposed  
submission is accepted as filed. One copy of the  
submission must be served and an original and two  
copies filed within seven days.

4                    Mo. No. 2017-663  
The People &c. ex rel. John H. Haddock,  
Appellant,  
v.  
Sandra Dolce, &c.,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Chief Judge DiFiore took no part.

4                    Mo. No. 2017-593  
In the Matter of Danyel J. et al.  
  
Jefferson County Department of Social  
Services,  
Respondent;  
Leeann K.-G.,  
Appellant;  
et al.,  
Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2017-448  
In the Matter of Kirchhoff-Consigli  
Construction Management, LLC,  
Respondent,  
v.  
Mechtronics Corporation,  
Appellant.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.  
Motion for a stay dismissed as academic.

4                    Mo. No. 2017-552  
In the Matter of Dixie D. Lemmon et al.,  
Respondents,  
v.  
Seneca Meadows, Inc., et al.,  
Appellants.

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



4                    Mo. No. 2017-638  
In the Matter of Joseph M., Jr.

Erie County Department of Social Services,  
Respondent;  
Joseph M., Sr.,  
Appellant.

Motion for leave to appeal denied.

1                    SSD 42  
Joern Meissner, &c.,  
Appellant,  
v.  
Tracy Yun, et al.,  
Respondents.

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.

2                    Mo. No. 2017-690  
In the Matter of Teddy Moore,  
Appellant,  
v.  
State of New York Grievance Committee for  
the Second, Eleventh, and Thirteenth Judicial  
Districts,  
Respondent.

Motion for reargument of motion for leave to appeal denied.  
Chief Judge DiFiore and Judge Feinman took no part.

1                    Mo. No. 2017-430  
New Greenwich Litigation Trustee, LLC, &c.,  
Appellant,  
v.  
Citco Fund Services (Europe) B.V., et al.,  
Respondents,  
et al.,  
Defendant.  
(And Another Action.)

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judges Garcia and Wilson took no part.

1 Mo. No. 2017-877  
In the Matter of Ruth Joanna O.O., &c.

Melissa O.,  
Appellant;  
Administration for Children's Services,  
Respondent.

Motion by Brooklyn Law School Disability and Civil Rights Clinic, et al. for leave to file a letter brief amici curiae on the appeal herein granted and the proposed letter brief is accepted as filed. One copy of the brief must be served and an original and two copies filed within seven days.

1 Mo. No. 2017-582  
In the Matter of Darnel J. P.,  
Appellant,

v.  
Lianna Y. D. et al.,  
Respondents.

Motion for leave to appeal denied.

4 SSD 38  
In the Matter of Michael Pilarz,  
Appellant,

v.  
Kevin Helfer, &c.,  
Respondent.

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

4 Mo. No. 2017-616  
In the Matter of Olivia S.

Wyoming County Department of Social Services,  
Respondent;

Dawn S.,  
Appellant.

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

2 SSD 39  
Gregory P. Scialdone,  
Appellant,

v.  
Stepping Stones Associates, L.P., et al.,  
Respondents.

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

4 Mo. No. 2017-660  
The People &c.,  
Respondent,  
v.  
John R. Simmons,  
Appellant.

Motion for assignment of counsel granted and David C. Schopp, Esq., Legal Aid Bureau of Buffalo, Inc., 290 Main Street, Suite 350, Buffalo, NY 14204 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2017-818  
The People &c.,  
Respondent,  
v.  
Johnnie Simpson, &c.,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

1 Mo. No. 2017-824  
Skanska USA Building Inc.,  
Appellant,  
v.  
Atlantic Yards B2 Owner, LLC, et al.,  
Respondents,  
et al.,  
Defendants.

Motion by Associated General Contractors of New York State, LLC 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.

1 Mo. No. 2017-698  
The People &c.,  
Respondent,  
v.  
Saylor Suazo,  
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.

1 Mo. No. 2017-777  
In the Matter of Anthony Thompson,  
Appellant,  
v.  
Cyrus R. Vance, Jr., et al.,  
Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2017-848  
In the Matter of Anthony Thompson,  
                         Appellant,  
                         v.  
Cyrus R. Vance, Jr., et al.,  
                         Respondents.

Motion for a stay dismissed as academic.

3                    SSD 40  
Tomhannock, LLC,  
                         Respondent,  
                         v.  
Roustabout Resources, LLC,  
                         Appellant,  
et al.,  
                         Defendants.

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.  
Judge Stein took no part.

1                    Mo. No. 2017-595  
Tonyia B. Watson,  
                         Appellant,  
                         v.  
State of New York,  
                         Respondent.  
(And Another Action.)

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no appeal lies as  
of right from the unanimous order of the Appellate  
Division absent the direct involvement of a  
substantial constitutional question (see CPLR 5601).  
Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Feinman took no part.

1                    Mo. No. 2017-788  
The People &c.,  
                         Respondent,  
                         v.  
Tyshell Williams,  
                         Appellant.

Motion for an extension of the time within which to  
apply for permission to appeal pursuant to CPL  
460.20 granted and motion papers treated as a timely  
CPL 460.20 application.

2                    Mo. No. 2017-726  
The People &c.,  
    Respondent,  
    v.  
Theodore Wilson,  
    Appellant.

Motion for assignment of counsel granted and Lynn  
W. L. Fahey, Esq., Appellate Advocates, 111 John  
Street, 9th Floor, New York, NY 10038 assigned as  
counsel to the appellant on the appeal herein.