

September 14, 2017

**CASES**

2                    No. 135 SSM 19  
Dolores Parietti et al.,  
                  Appellants,  
                  v.  
Wal-Mart Stores, Inc. et al.,  
                  Respondents,  
et al.,  
                  Defendant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and the motion of Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P. for summary judgment dismissing the complaint, insofar as asserted against them, denied. In a slip-and-fall case, a defendant property owner moving for summary judgment has the burden of making a prima facie showing that it neither (1) affirmatively created the hazardous condition nor (2) had actual or constructive notice of the condition and a reasonable time to correct or warn about its existence (see Lewis v Metropolitan Transp. Auth., 99 AD2d 246, 249 [1984], affd for reason stated below 64 NY2d 670 [1984]). Triable issues of fact exist as to whether Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P. had notice of a hazardous condition and a reasonable time to correct or warn about its existence.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

No. 136

In the Matter of the Hon. Lurlyn A.  
Winchester, a Justice of the Monroe Town  
Court, Orange County.

On consideration of the continuation of this Court's June 27, 2017 suspension of Honorable Lurlyn A. Winchester from the office of Justice of Monroe Town Court, Orange County (see 29 NY3d 1044 [2017]), it is determined that the Honorable Lurlyn A. Winchester is suspended, without pay, effective immediately, from the office of Justice of Monroe Town Court, Orange County, pursuant to New York Constitution, article VI, § 22 and Judiciary Law § 44. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

## MOTIONS

2 Mo. No. 2017-940  
The People &c.,  
Respondent,  
v.  
Mario Arjune,  
Appellant.

Motion by National Association of Criminal Defense Lawyers, 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.

4 Mo. No. 2017-676  
In the Matter of Nataylia C.B. et al.

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

Onondaga County Department of Children  
and Family Services,  
Respondent;  
Christopher B.,  
Appellant.

1 Mo. No. 2017-925  
The People &c.,  
Respondent,  
v.  
Mark Boyd,  
Appellant.

Motion for assignment of counsel granted and Marianne Karas, Esq., 980 Broadway, Suite 324, Thornwood, NY 10594-1139 assigned as counsel to the appellant on the appeal herein.

1 SSD 43  
In the Matter of New York City Asbestos  
Litigation.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the Appellate Division does not have the power to grant leave to appeal to this Court on a certified question from an order granting a new trial (see CPLR 5601[c]; 5602[b][1]; Trezza v Metropolitan Transp. Auth., 23 NY3d 1011, 1011 [2014]).

Phyllis Brown, &c.,  
Respondent,  
v.  
Bell & Gossett Company,  
Defendant,  
Consolidated Edison of New York, Inc.,  
Appellant.

1                    Mo. No. 2017-542  
Capital One Taxi Medallion Finance,  
Respondent,  
v.  
Patton R. Corrigan et al.,  
Appellants.

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

4                    Mo. No. 2017-942  
Michael J. Carlson, Sr., &c.,  
Appellant,  
v.  
American International Group, Inc., et al.,  
Respondents.

Motion by American Insurance Association 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 Fahey took no part.

4                    Mo. No. 2017-943  
Michael J. Carlson, Sr., &c.,  
Appellant,  
v.  
American International Group, Inc., et al.,  
Respondents.

Motion by New York State Academy of Trial  
Lawyers 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.  
Judge Fahey took no part.

                         Mo. No. 2017-939  
Veronika Chauca,  
Appellant,  
v.  
Jamil Abraham, et al.,  
Respondents.

Motion by Anti-Discrimination Center, Inc. for leave  
to file a brief and legislative materials appendix  
amicus curiae on consideration of the certified  
question herein granted and the proposed brief and  
legislative materials appendix are accepted as filed.  
Two copies of the brief and legislative materials  
appendix must be served and an original and nine  
copies filed within seven days.

Mo. No. 2017-945

Veronika Chauca,  
Appellant,  
v.  
Jamil Abraham, et al.,  
Respondents.

Motion by City of New York for leave to file a brief amicus curiae on consideration of the certified question herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and an original and nine copies filed within seven days.

Mo. No. 2017-962

Veronika Chauca,  
Appellant,  
v.  
Jamil Abraham, et al.,  
Respondents.

Motion by National Employment Lawyers Association/New York (NELA/NY) for leave to appear amicus curiae on consideration of the certified question 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.

SSD 45

In the Matter of Evan A. Davis,  
Appellant,  
v.  
New York State Board of Elections,  
Respondent.

Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

1 Mo. No. 2017-779

Lisa Del Valle,  
Respondent,  
v.  
William Gensert,  
Appellant.

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.

4 Mo. No. 2017-928  
The People &c.,  
Respondent,  
v.  
Phillip A. Dodson,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2017-675  
A. F., et al.,  
Appellants,  
v.  
Cathedral Properties, LLC, et al.,  
Defendants,  
Prime Realty Services, et al.,  
Respondents.

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

Mo. No. 2017-954  
The People &c.,  
Respondent,  
v.  
Mary Anne Grady Flores,  
Appellant.

Motion by New York Civil Liberties Union 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. 2017-657  
In the Matter of Jean Frantz,  
Appellant,  
v.  
Donald Venettozzi, &c.,  
Respondent.

Motion for leave to appeal granted.

4                    Mo. No. 2017-601  
Joseph P. Gallagher, Jr. et al.,  
Appellants,  
v.  
Dominic Ruzzine, Jr., et al.,  
Defendants,  
Timothy R. Malchow, et al.,  
Respondents.

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

                         Mo. No. 2017-825  
Karine Gevorkyan, et al.,  
Appellants,  
v.  
Ira Judelson,  
Respondent.

Motion for reargument denied.  
Judge Feinman took no part.

4                    Mo. No. 2017-929  
The People &c.,  
Respondent,  
v.  
Jakim Grimes,  
Appellant

Motion for assignment of counsel granted and Joseph C. Perry, c/o Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10122-4498 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2017-692  
In the Matter of Iskalo 5000 Main LLC et al.,  
Appellants,  
v.  
Town of Amherst Industrial Development  
Agency,  
Respondent.  
County of Erie,  
Intervenor-Respondent.

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

2 Mo. No. 2017-612  
Israel Kashipour et al.,  
Respondents,  
v.  
Wilmington Savings Fund Society, FSB, &c.,  
Appellant.

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

1 Mo. No. 2017-687  
Andrew Kolchins,  
Respondent,  
v.  
Evolution Markets, Inc.,  
Appellant.

Motion to strike portions of plaintiff-respondent's brief granted to the extent that those portions relate to discovery materials that are de hors the record; motion to strike otherwise denied.  
Judge Feinman took no part.

2 Mo. No. 2017-607  
Jacqueline Koslosky,  
Appellant,  
v.  
Fran G. Ross-Malmut, et al.,  
Defendants,  
Auto Excellence Auto Body,  
Respondent.

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

1 Mo. No. 2017-742  
MBI International Holdings Inc. et al.,  
Appellants,  
v.  
Barclays Bank PLC,  
Respondent.

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

1 Mo. No. 2017-858  
MBI International Holdings Inc. et al.,  
Appellants,  
v.  
Barclays Bank PLC,  
Respondent.

Motion by Patrick M. Connors et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the proposed brief is accepted as filed.  
Judges Garcia and Feinman took no part.



1                    Mo. No. 2017-756  
In the Matter of MJ Cahn Co.,  
                  Appellant,  
          v.  
New York State Division of Human Rights,  
          Respondent,  
Maimouna Kamate,  
          Respondent.

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

1                    Mo. No. 2017-762  
Moon 170 Mercer, Inc.,  
                  Respondent,  
          v.  
Zachary Vella,  
          Appellant.

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

2                    Mo. No. 2017-738  
Teddy Moore,  
                  Appellant,  
          v.  
Frank Guerra,  
          Defendant,  
City of New York, et al.,  
          Respondents.

Motion for reconsideration of this Court's June 22, 2017 dismissal order denied.  
Judge Feinman took no part.

1                    Mo. No. 2017-672  
Wilson Ortiz et al.,  
                  Appellants,  
          v.  
Igby Huntlaw LLC,  
          Defendant,  
A.E. Greyson & Co., Inc.,  
          Respondent.

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

2 Mo. No. 2017-709  
The People &c.,  
Respondent,  
v.  
Robert Perry,  
Appellant.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the issues  
presented have become moot.  
Motion to strike portions of the brief and appendix  
dismissed as academic.

3 Mo. No. 2017-737  
In the Matter of Jean G. Pierre,  
Appellant.  
FJC Security Services, Inc.,  
Respondent.  
Commissioner of Labor,  
Respondent.

Motion 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.

3 Mo. No. 2017-661  
In the Matter of Cal Pittner,  
Claimant,  
Francesca Beccari,  
Appellant,  
v.  
St. Gobain Corporation et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

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

2 Mo. No. 2017-714  
The People &c.,  
Respondent,  
v.  
Fehd Ragabi, &c.,  
Appellant.

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

2 Mo. No. 2017-622  
The People &c.,  
Respondent,  
v.  
Kevin Robinson,  
Appellant.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as dismissed defendant's appeals from Supreme Court's decisions, dismissed upon the ground that no motion for leave to appeal lies from an Appellate Division order dismissing an appeal from a decision (see CPLR 5602); motion for leave to appeal otherwise denied.

1 Mo. No. 2017-906  
Carlos Rodriguez,  
Appellant,  
v.  
City of New York,  
Respondent.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

4 Mo. No. 2017-923  
The People &c.,  
Respondent,  
v.  
Terrie J. Rush,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2017-673  
In the Matter of Brooklyn S.

Motion for leave to appeal denied.

Onondaga County Department of Children  
and Family Services,  
Respondent;  
Stafania Q.,  
Respondent,  
Devin S.,  
Appellant.

1                    Mo. No. 2017-658  
Zafar Salyamov, &c.,  
    Appellant,  
    v.  
Ben Lyhovsky, &c.,  
    Respondent.

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

2                    Mo. No. 2017-739  
In the Matter of Wladimir Sanchez et al.,  
    Appellants,  
    v.  
Commissioner, Department of Housing  
Preservation and Development of City of  
New York et al.,  
    Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, § 3).

                      Mo. No. 2017-898  
The People &c.,  
    Respondent,  
    v.  
Aleksejs Saveljevs,  
    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.

3                    Mo. No. 2017-669  
Robert Shelmerdine et al.,  
    Respondents,  
    v.  
Nancy Myers,  
    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2017-853  
Bonnie Spence-Burke,  
    Appellant,  
    v.  
Kevin Burke,  
    Respondent.

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

3                    Mo. No. 2017-615  
In the Matter of Lillian SS. et al., &c.

Ulster County Department of Social Services,  
Respondent;  
Keri SS.,  
Appellant.  
(And a Related Proceeding.)

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

4                    Mo. No. 2017-627  
Workers' Compensation Board of State of  
New York,  
Respondent,  
v.  
Old Lamson Station, Inc.,  
Appellant.

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