

October 16, 2018

**CASES**

No. 94  
In the Matter of Leticia D. Astacio, a Judge of  
the Rochester City Court, Monroe County.

Leticia D. Astacio,  
Petitioner;  
New York State Commission on Judicial  
Conduct,  
Respondent.

Determined sanction accepted, without costs, and  
Leticia D. Astacio removed from the office of Judge  
of Rochester City Court, Monroe County.  
Opinion Per Curiam.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia, Wilson and Feinman concur.

1 No. 144 SSM 19  
Marie Bradley, &c., et al.,  
Appellants,  
v.  
HWA 1290 III LLC, et al.,  
Respondents.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs. To the  
extent that a violation of standards of the American  
National Standards Institute (ANSI) constitutes  
evidence of negligence (see Sawyer v Dreis &  
Krump Mfg. Co., 67 NY2d 328 [1986]; Trimarco v  
Klein, 56 NY2d 98 [1982]), plaintiffs' reliance on  
those standards was proper. However, plaintiffs  
nevertheless failed to raise a triable question of fact  
as to whether defendants had either actual or  
constructive notice of the alleged dangerous  
condition.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Wilson and Feinman concur.  
Judge Garcia took no part.

1                    No. 27  
The People &c.,  
    Appellant,  
    v.  
Raymond Crespo,  
    Respondent.

Order reversed and case remitted to the Appellate Division, First Department, for consideration of the facts (CPL 470.25[2][d]; 470.40[2][b]) and issues raised but not determined on the appeal to that court. Opinion by Chief Judge DiFiore. Judges Stein, Garcia and Scheinkman concur. Judge Rivera dissents and votes to affirm in an opinion, in which Judges Fahey and Wilson concur. Judge Feinman took no part.

1                    No. 96  
Deutsche Bank National Trust Company,  
solely in its capacity as Trustee for the  
Harborview Mortgage Loan Trust Series  
2007-7,  
    Appellant,  
    v.  
Flagstar Capital Markets Corporation,  
    Defendant,  
Quicken Loans, Inc.,  
    Respondent.

Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Fahey. Chief Judge DiFiore and Judges Stein and Feinman concur. Judge Rivera dissents in an opinion, in which Judge Wilson concurs in a separate dissenting opinion. Judge Garcia took no part.

                    No. 99  
In the Matter of Terrence C. O'Connor, a  
Judge of the Civil Court of the City of New  
York, Queens County.  
  
Terrence C. O'Connor,  
    Petitioner;  
New York State Commission on Judicial  
Conduct,  
    Respondent.

Determined sanction accepted, without costs, and Terrence C. O'Connor removed from the office of Judge of the Civil Court of the City of New York, Queens County. Opinion Per Curiam. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

## MOTIONS

1                    Mo. No. 2018-766  
Oliver Douce Al-Dey,  
    Appellant,  
    v.  
City of New York,  
    Respondent.

Motion for reargument of motion for leave to appeal denied.

1                    Mo. No. 2018-742  
Kawasi Asante-Tannor,  
    Appellant,  
    v.  
Betty Chia-Wen Chang, M.D., et al.,  
    Respondents,  
et al.,  
    Defendant.

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

2                    Mo. No. 2018-758  
The People &c.,  
    Respondent,  
    v.  
Bruce Auger,  
    Appellant.

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

1                    SSD 59  
Arthur Kevin Berry,  
    Appellant,  
    v.  
New York State Department of Taxation and  
Finance, et al.,  
    Respondents.

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

1                    Mo. No. 2018-734  
Bright Stone Corp. et al.,  
    Respondents,  
    v.  
J&J Associates II, LLC, &c. et al.,  
    Appellants.

Motion for leave to appeal, insofar as made by defendant Joann Montalbano, dismissed upon the ground that she is not a party aggrieved (see CPLR 5511); motion otherwise 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. 2018-743  
The People &c.,  
    Respondent,  
    v.  
Daniel Brown,  
    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2018-694  
Citimortgage, Inc.,  
    Respondent,  
    v.  
Michael C. Banks, et al.,  
    Appellants,  
et al.,  
    Defendants.

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

3                    Mo. No. 2018-797  
Town of Clifton Park,  
    Respondent,  
    v.  
Boni Builders, Inc. et al.,  
    Appellants,  
Lakshmi Mohan et al.,  
    Respondents.

Motion for leave to appeal dismissed upon the ground that the Appellate Division order does not finally determine the action within the meaning of the Constitution and that the stipulation does not qualify as a final judgment within the meaning of CPLR 5602(a)(1)(ii) to bring up for review the prior nonfinal Appellate Division order because it was entered "without prejudice."

4                    Mo. No. 2018-723  
In the Matter of Matthew M. Cobado,  
                          Appellant,  
                          v.  
John R. Searles, &c.,  
                          Respondent.

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

1                    Mo. No. 2018-833  
The People &c.,  
                          Respondent,  
                          v.  
Omar Deleon,  
                          Appellant.

Motion to enlarge the record denied.

1                    Mo. No. 2018-720  
Linda Greene Easley,  
                          Appellant,  
                          v.  
The Animal Medical Center,  
                          Respondent,  
et al.,  
                          Defendants.

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

2                    Mo. No. 2018-762  
Veeramuthu P. Gounder,  
                          Appellant,  
                          v.  
Communicar, Inc. et al.,  
                          Respondents.

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

2                    Mo. No. 2018-763  
Veeramuthu P. Gounder,  
    Appellant,  
    v.  
Argante R. Grippa et al.,  
    Respondents.

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

2                    Mo. No. 2018-765  
Veeramuthu P. Gounder,  
    Appellant,  
    v.  
Progressive Credit Union,  
    Respondent.

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

2                    Mo. No. 2018-773  
Veeramuthu P. Gounder,  
    Appellant,  
    v.  
Progressive Credit Union et al.,  
    Respondents.

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

3                    Mo. No. 2018-784  
Rashiek Haynes,  
    Appellant,  
    v.  
Mark Williams, et al.,  
    Respondents.

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

4 Mo. No. 2018-891  
The People &c. ex rel. John A.J. Hinspeter, II,  
Appellant,  
v.  
Dale A. Artus, &c.,  
Respondent.

Motion for reargument of motion for leave to appeal denied.

2 Mo. No. 2018-759  
The People &c.,  
Respondent,  
v.  
Dennis Hogan,  
Appellant.

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

1 Mo. No. 2018-801  
Huntsman International LLC,  
Appellant,  
v.  
Albemarle Corporation, et al.,  
Respondents.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as stayed the action pending arbitration, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.  
Chief Judge DiFiore and Judge Garcia took no part.

2 Mo. No. 2018-786  
In the Matter of Yaakov K.,  
Appellant.

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

1 Mo. No. 2018-788  
Joseph Korff,  
Appellant,  
v.  
Richard A. Corbett, et al.,  
Respondents.

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

4 Mo. No. 2018-704  
In the Matter of Zander L.

Erie County Department of Social Services,  
Respondent;  
Athena L.,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2018-737  
In the Matter of Douglas LaPerche,  
Respondent,

v.  
City of Peekskill,  
Appellant.

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

1 Mo. No. 2018-730  
Level 3 Communications, LLC (Now Known  
as Centurylink),  
Respondent,  
RCN Telecom Services of New York L.P., et  
al.,

Appellants,  
v.  
Jacques Jiha, et al.,  
Respondents.

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

1 Mo. No. 2018-783  
Level 3 Communications, LLC (Now Known  
as Centurylink),  
Respondent,  
RCN Telecom Services of New York L.P., et  
al.,

Appellants,  
v.  
Jacques Jiha, et al.,  
Respondents.

Motion by T-Mobile Northeast, LLC for leave to appear amicus curiae on the motion for leave to appeal herein denied.

2                   SSD 61  
In the Matter of Barry Manuel,  
                  Appellant,  
          v.  
Thomas Griffin, &c.  
                  Respondent.

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

3                   Mo. No. 2018-727  
In the Matter of Melvin M. Marin, a  
Suspended Attorney.  
  
Attorney Grievance Committee for the Third  
Judicial Department,  
                  Respondent,  
Melvin M. Marin,  
                  Appellant.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the order  
appealed from does not finally determine the  
proceeding within the meaning of the Constitution.  
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.  
Motion for poor person relief dismissed as academic.

3                   Mo. No. 2018-848  
In the Matter of Willie Frank Nelson,  
                  Appellant,  
          v.  
Tina M. Stanford, &c.,  
                  Respondent.

Motion for leave to appeal denied.

2                   Mo. No. 2018-769  
The People &c.,  
                  Respondent,  
          v.  
Jose Perez,  
                  Appellant.

Motion for leave to appeal granted.  
Motion for poor person relief granted.

3                    Mo. No. 2018-718  
In the Matter of Curtis Phillips,  
    Appellant,  
    v.  
Anthony J. Annucci, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2018-795  
The People &c.,  
    Respondent,  
    v.  
Nelson Ramirez,  
    Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2018-747  
In the Matter of Darlene Reid,  
    Respondent,  
    v.  
Debra Reid-Yancey,  
    Appellant.

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

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In the Matter of Jennifer L. Johnson,  
    Respondent,  
    v.  
Debra Reid-Yancey,  
    Appellant,  
Darlene Reid,  
    Respondent.

2                    Mo. No. 2018-793  
In the Matter of Michelle Rouse-Williams,  
    Respondent,  
    v.  
Donnie Williams,  
    Appellant.

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.  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2018-760  
In the Matter of Richard P. Savitt, &c.

Departmental Disciplinary Committee for the  
First Judicial Department,  
Respondent,  
Richard P. Savitt,  
Appellant.

Motion, insofar as it seeks leave to appeal from the  
April 2018 Appellate Division orders, dismissed as  
untimely; motion, insofar as it seeks leave to appeal  
from the July 2018 Appellate Division order,  
dismissed upon the ground that the order sought to  
be appealed from does not finally determine the  
proceeding within the meaning of the Constitution.  
Motion for poor person relief dismissed as academic.  
Motion for a stay dismissed as academic.

1                    Mo. No. 2018-746  
In the Matter of Skyhigh Murals-Colossal  
Media Inc., &c.,  
Appellant,

v.  
Board of Standards and Appeals of the City of  
New York,  
Respondent.

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

4                    Mo. No. 2018-832  
In the Matter of Korey W. Smith,  
Respondent,

v.  
Kassi L. Lopez,  
Appellant.

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

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In the Matter of Kassi L. Lopez,  
Appellant,

v.  
Korey W. Smith,  
Respondent.

2 Mo. No. 2018-755

The People &c.,  
Respondent,  
v.  
Derrick Sprinkler,  
Appellant.

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

2 Mo. No. 2018-748

In the Matter of Suffolk County Department  
of Social Services, on behalf of Donna B.,  
Respondent,  
v.  
Dominick C.,  
Respondent.  
Arza Rayches Feldman, Esq., Attorney for the  
Child,  
Appellant.

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.  
Motion for poor person relief dismissed as academic.

3 Mo. No. 2018-751

In the Matter of Toronto Dominion Holdings  
(U.S.A.), Inc., &c.,  
Appellant,  
v.  
Tax Appeals Tribunal of the State of New  
York et al.,  
Respondents.

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

2 Mo. No. 2018-745

The People &c.,  
Respondent,  
v.  
Hector Vasquez,  
Appellant.

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

2                    Mo. No. 2018-761  
In the Matter of John L. Weslowski,  
                          Appellant,  
                          v.  
Edwin J. Day, &c., et al.,  
                          Respondents.

Motion for reconsideration of this Court's June 26,  
2018 dismissal order denied.

2                    Mo. No. 2018-772  
The People &c. ex rel. Esau S. Wright,  
                          Appellant,  
                          v.  
Vera Fludd, &c.,  
                          Respondent.

Motion for leave to appeal denied.