

**State of New York**  
**Court of Appeals**

**Decisions**

September 15, 2022

**CASE**

4                    No. 101 SSM 11  
Sharad Shaw,  
    Appellant,  
    v.  
City of Rochester et al.,  
    Respondents.

On review of submissions pursuant to section 500.11 of the Rules, appeal dismissed, with costs, upon the ground that the two-Justice dissent at the Appellate Division is not on a question of law which would be reviewable by the Court of Appeals (*see* CPLR 5601 [a]; 5501 [a] [1]). The dissent was predicated on an order denying partial summary judgment that did not necessarily affect the judgment from which the appeal was taken (*see Bonczar v American Multi-Cinema, Inc.*, 38 NY3d 1023 [2022]). Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson and Singas concur. Judge Troutman took no part.

## MOTIONS

1                    Mo. No. 2022-486  
In Rem Tax Foreclosure Action No. 52, &c.

City of New York,  
Respondent,

v.

1600 Nelson Avenue Housing Development  
Corporation,

Appellant.

Neighborhood Restore Housing Development  
Fund Corporation,

Nonparty-Respondent.

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

2                    Mo. No. 2022-447

Jeanne Altman,  
Plaintiff,

Charles Altman,  
Appellant,

v.

Richard S. DiPreta, et al.,  
Respondents,

et al.,

Defendant.

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

2                    Mo. No. 2022-460

Susan Aranoff,  
Respondent,

v.

Gerald Aranoff,  
Appellant.

Motion, insofar as it seeks leave to appeal from the April 1996 Appellate Division order, dismissed for failure to demonstrate timeliness as required by Rules of the Court of Appeals (*see* Rules of Ct of Appeals [22 NYCRR] § 500.22 [b] [2]); motion for leave to appeal otherwise dismissed upon the ground that the paper sought to be appealed from is not an order or judgment appealable to the Court of Appeals (*see* CPLR 5512).

2 Mo. No. 2022-427  
The People &c.,  
Respondent,  
v.  
Dennis Barr,  
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2022-435  
David M. Bonczar,  
Appellant,  
v.  
American Multi-Cinema, Inc., &c.,  
Respondent.

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Troutman took no part.

2 Mo. No. 2022-446  
The People &c.,  
Respondent,  
v.  
James Bonfiglio,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-408  
Tonya Brown, et al.,  
Appellants,  
v.  
Cerberus Capital Management, L.P., et al.,  
Respondents.

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

1 Mo. No. 2022-442  
The People &c.,  
Respondent,  
v.  
Gabriel Bulina,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-651  
The People &c.,  
Respondent,  
v.  
Angelo Carzoglio,  
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. 2022-500  
Michael D. Cohen,  
Appellant,  
v.  
Jeffrey Getzel et al.,  
Respondents.

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

1 Mo. No. 2022-569  
Carol Commissiong,  
Appellant,  
v.  
Mark Greenberg Real Estate Co. LLC, et al.,  
Respondents.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2022-403  
In the Matter of Blaise Cozzolino,  
Respondent,  
v.  
New York State Division of Housing and  
Community Renewal,  
Respondent,  
Trump Park Avenue LLC et al.,  
Intervenors-Appellants.

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

Mo. No. 2022-667  
The People &c.,  
Respondent,  
v.  
Jaime Cruz,  
Appellant.

Motion for assignment of counsel granted and Twyla Carter, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2022-434  
The People &c.,  
Respondent,  
v.  
Giscard Dejean,  
Appellant.

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

2 Mo. No. 2022-492  
Federal National Mortgage Association, &c.,  
Appellant,  
v.  
Francis M. Sajdak, &c.,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal dismissed upon the ground that no motion for leave to appeal lies pursuant to CPLR 5602 (a) (1) (ii) from the May 2022 judgment of Supreme Court because that judgment does not finally determine the action within the meaning of the Constitution.

3 Mo. No. 2022-445  
In the Matter of Joanne Fuller-Astarita,  
Appellant,  
v.  
ABA Transportation Holding Company,  
Respondent.  
Workers' Compensation Board,  
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.

1 Mo. No. 2022-439  
In the Matter of Omer Grgurev et al.,  
Respondents,  
v.  
Milan Licul, &c., et al.,  
Appellants,  
et al.,  
Respondents/Defendants.

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

4 Mo. No. 2022-626  
In the Matter of Tim Harkenrider, et al.,  
Respondents,  
v.  
Kathy Hochul, &c., et al.,  
Respondents.  
The Parent Party of New York, et al.,  
Appellants.

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.

2 Mo. No. 2022-468  
In the Matter of David Hunstein,  
Appellant,  
v.  
Town of Southold, et al.,  
Respondents.

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

2 Mo. No. 2022-666  
The People &c.,  
Respondent,  
v.  
Luis Jimenez,  
Appellant.

Motion by Animal Legal Defense Fund et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

2 Mo. No. 2022-471  
JPMorgan Chase Bank, National Association,  
Respondent,  
v.  
Rebecca Wells Fischer, &c., et al.,  
Appellants,  
et al.,  
Defendants.

Motion, insofar as it seeks leave to appeal from the May 2021 Appellate Division order, dismissed as untimely (*see* CPLR 5513 [b]; *Eaton v State of New York*, 76 NY2d 824 [1990]); motion, insofar as it seeks leave to appeal from the March 2022 Appellate Division order, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution.

2 Mo. No. 2022-452  
Steven Kattan,  
Appellant,  
v.  
Sharon Kattan,  
Respondent.

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

1 Mo. No. 2022-420  
Gregory D. Kilpatrick,  
Appellant,  
v.  
Sahar Kamkar, &c.,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the order  
appealed from does not finally determine the action  
within the meaning of the Constitution.  
Motion for reargument of motion for leave to appeal  
denied.

1 Mo. No. 2022-421  
Gregory D. Kilpatrick,  
Appellant,  
v.  
Jennifer L. Henkin, &c.,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the order  
appealed from does not finally determine the action  
within the meaning of the Constitution.  
Motion for reargument of motion for leave to appeal  
denied.  
Motion by respondent for the imposition of sanctions  
denied.

1 Mo. No. 2022-422  
Gregory D. Kilpatrick,  
Appellant,  
v.  
Fabio Volterra, &c.,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the order  
appealed from does not finally determine the action  
within the meaning of the Constitution.  
Motion for reargument of motion for leave to appeal  
denied.

1 Mo. No. 2022-423  
Gregory D. Kilpatrick,  
Appellant,  
v.  
Leslie M. Arp, &c. et al.,  
Respondents.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that the order  
appealed from does not finally determine the action  
within the meaning of the Constitution.  
Motion for reargument of motion for leave to appeal  
denied.

1                    Mo. No. 2022-424  
Gregory D. Kilpatrick,  
    Appellant,  
    v.  
Elizabeth Berlin, &c., et al.,  
    Respondents.

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

1                    Mo. No. 2022-425  
Gregory D. Kilpatrick,  
    Appellant,  
    v.  
Andrew Cuomo, &c., et al.,  
    Respondents.

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

1                    Mo. No. 2022-436  
Gregory D. Kilpatrick,  
    Appellant,  
    v.  
Jessie Fields, &c.,  
    Respondent.

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



3 Mo. No. 2022-622  
In the Matter of the Estate of Patricia A. King,  
&c.

Rachel King,  
Respondent;  
Jared King,  
Appellant.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no appeal lies to  
this Court from the decision of an individual Justice  
of the Appellate Division (*see* NY Const, art VI, § 3  
[b]; CPLR 5601).  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2022-397  
Kinwing (Ricky) Kwong,  
Appellant,  
v.  
City of New York 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. 2022-400  
The People &c.,  
Respondent,  
v.  
Peter Lombardi,  
Appellant.

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

1 Mo. No. 2022-454  
Christopher Mahne,  
Respondent,  
v.  
Cell Source, Inc.,  
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. 2022-670  
William D. Maldovan, &c.,  
Appellant,  
v.  
County of Erie et al.,  
Respondents.

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

1 Mo. No. 2022-441

Nella Manko,  
Appellant,  
v.  
Dr. Dana Mannor, et al.,  
Respondents,  
Lenox Hill Hospital, &c. et al.,  
Defendants.

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Nella Manko,  
Appellant,  
v.  
Dana Mannor, et al.,  
Respondents,  
"Anesthesiologist" (a fictitious name), 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 actions within the meaning of the Constitution.  
Motion for poor person relief dismissed as academic.

2 Mo. No. 2022-524

Nella Manko,  
Appellant,  
v.  
David A. Gabay, &c., et al.,  
Respondents.  
(Action Nos. 1, 2, 3)

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Nella Manko,  
Appellant,  
v.  
Law Offices of David A. Gabay, &c., et al.,  
Respondents.  
(Action No. 4)

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

2                    Mo. No. 2022-567  
Nella Manko,  
    Appellant,  
    v.  
David A. Gabay, et al.,  
    Respondents,  
et al.,  
    Defendants.  
(Index No. 22148/2013)

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Nella Manko,  
    Appellant,  
    v.  
David A. Gabay, &c., et al.,  
    Respondents.  
(Index No. 22148/2013)

2                    Mo. No. 2022-450  
The People &c.,  
    Respondent,  
    v.  
William A. Manning,  
    Appellant.

3                    Mo. No. 2022-366  
McCarthy Concrete Incorporated,  
    Appellant,  
    v.  
Banton Construction Company, et al.,  
    Respondents.

3                    Mo. No. 2022-417  
In the Matter of Reginald McDonald,  
    Appellant,  
    v.  
Anthony J. Annucci, &c.,  
    Respondent.

Motion for reconsideration of this Court's June 14,  
2022 dismissal order denied.  
Motion for poor person relief dismissed as academic.

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

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

Motion for leave to appeal denied.

4 Mo. No. 2022-548  
The People &c. ex rel. Richard Mills,  
Appellant,  
v.  
Superintendent Stight, &c. et al.,  
Respondents.

Motion for leave to appeal dismissed upon the  
ground that the Court does not have jurisdiction to  
entertain it.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2022-431  
The People &c.,  
Respondent,  
v.  
Jose Miranda,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-512  
Jerry S. Needleman,  
Appellant,  
v.  
Michael McFadden et al.,  
Respondents.

Motion for reargument of motion for leave to appeal  
denied.

3 Mo. No. 2022-455  
In the Matter of Joseph Nemeth, et al.,  
Appellants,  
v.  
K-Tooling, et al.,  
Respondents.

Motion for leave to appeal granted.

1 Mo. No. 2022-465  
Stefan Nieborak, et al.,  
Respondents,  
v.  
W54-7 LLC,  
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.

2 Mo. No. 2022-637  
Robert E. Nowakowski,  
Appellant,  
v.  
Broadway Stages et al.,  
Respondents.

Motion for leave to appeal &c. dismissed upon the ground that no appeal lies from the order of an individual Justice of the Appellate Division (*see* NY Const, art VI, § 3 [b]; CPLR 5602).

1 Mo. No. 2022-419  
Cheryl Overton,  
Appellant,  
v.  
Egami Group, Inc., 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. 2022-479  
Usman Oyibo,  
Appellant,  
v.  
Huntington Hospital Medical Center, et al.,  
Respondents.

Motion for reargument of motion for leave to appeal &c. denied.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2022-432  
The People &c.,  
Respondent,  
v.  
Phillip Patterson,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-404  
Ralph Perlberger,  
Respondent,  
v.  
Gary Lutin,  
Appellant.

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

1                    Mo. No. 2022-453  
Victoria Pistone, et al.,  
    Respondents,  
    v.  
American Biltrite, Inc., &c.,  
    Appellant,  
Mannington Mills, Inc.,  
    Appellant,  
et al.,  
    Defendants.

Motion by appellant American Biltrite, Inc. for reargument of motion for leave to appeal denied.

3                    Mo. No. 2022-428  
In the Matter of the Claim of Michael Powers,  
    Appellant,  
    v.  
State Material Mason Supply et al.,  
    Respondents.  
Workers' Compensation Board,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2022-387  
In the Matter of Prismatic Development Corporation,  
    Appellant,  
    v.  
New York City Transit Authority et al.,  
    Respondents.

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

1                    Mo. No. 2022-426  
Patrice Ricciardi, &c., et al.,  
    Appellants,  
    v.  
State of New York,  
    Respondent.

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

1 Mo. No. 2022-440  
Richard Robbins,  
Appellant,  
v.  
315 West 103 Enterprises LLC et al.,  
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2022-415  
The People &c.,  
Respondent,  
v.  
Luis Rodriguez,  
Appellant.

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

4 Mo. No. 2022-383  
In the Matter of City of Rome,  
Appellant,  
v.  
Board of Assessors, et al.,  
Respondents,  
Adirondack Central School District et al.,  
Intervenors-Respondents.

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

1 Mo. No. 2022-443  
The People &c.,  
Reespondent,  
v.  
Alexandro Ruiz,  
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2022-418  
In the Matter of Camillo M. Santomero et al.,  
Appellants,  
v.  
Town of Bedford et al.,  
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2022-458  
The People &c.,  
Respondent,  
v.  
Paul L. Scrom,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2022-505  
In the Matter of Shchukin House OU et al.,  
Appellants,  
v.  
Irina Frolova,  
Respondent,  
et al.,  
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2022-520  
Martha Southard et al., &c.,  
Respondents,  
v.  
Peter Harris, &c.,  
Appellant,  
Debra Gross,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the Court of Appeals has jurisdiction to entertain a motion for leave to appeal pursuant to CPLR 5602 (a) (1) (ii) from a final judgment of Supreme Court only where a prior nonfinal Appellate Division order necessarily affects that judgment, and the prior nonfinal November 2021 Appellate Division order sought to be reviewed here denying a motion for a stay is not such an order.

2 Mo. No. 2022-605  
In the Matter of Daniel J. Statini,  
Appellant,  
v.  
Paige A. Reed,  
Respondent.  
(And Another Proceeding.)

Motion for leave to appeal denied.



1                    Mo. No. 2022-477  
Burton Sultan,  
    Appellant,  
    v.  
Stephane Cosman Connery, &c.,  
    Respondent.

Motion for reargument of motion for leave to appeal denied.

2                    Mo. No. 2022-407  
In the Matter of Teamsters Local 445,  
    Respondent,  
    v.  
Town of Monroe,  
    Appellant.

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 granted.

4                    Mo. No. 2022-401  
The People &c.,  
    Respondent,  
    v.  
David F. Tuszynski,  
    Appellant.

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

1                    Mo. No. 2022-396  
In the Matter of Weingrad & Weingrad, et al.,  
    Appellants,  
    v.  
Paul Allan Goetz, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2022-429  
In the Matter of Wells Fargo Bank, et al.,  
    Petitioners,  
    v.  
Aegon USA Investment Management, LLC,  
et al.,  
    Respondents,  
U.S. Bank National Association, &c.,  
    Appellant,  
Tilden Park Investment Master Fund, &c.,  
    Appellant,  
Nover Ventures LLC, et al.,  
    Respondents.

Motion for reargument of motions for leave to appeal denied.

1                    Mo. No. 2022-430  
In the Matter of Lucille B. Williams, &c.

Motion for leave to appeal denied.

David Williams et al.,  
    Appellants,  
    v.  
Claire Fisher Martino, &c.,  
    Respondent.

2                    Mo. No. 2022-402  
Keithan Williams,  
    Appellant,  
    v.  
E & R Jamaica Food Corp. et al.,  
    Respondents,  
et al.,  
    Defendant.

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

2                    Mo. No. 2022-470  
In the Matter of Joseph Wysocki,  
    Appellant,  
    v.  
Town of Southold, et al.,  
    Respondents.

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