

Our affirmance (Appeal No. 1084, decided herewith) of a subsequent order dismissing the complaint renders this appeal academic.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 1, 2009

CLERK

Mazzarelli, J.P., Saxe, Moskowitz, Renwick, JJ.

1069 Randa Bishop,
Plaintiff-Respondent,

Index 101683/04

-against-

59 West 12th Street Condominium,
Defendant-Appellant,

Goodstein Management, Inc., et al.,
Defendants.

Braverman & Associates, P.C., New York (Jonathan Kolbrener of counsel), for appellant.

Marcus Rosenberg & Diamond LLP, New York (David Rosenberg of counsel), for respondent.

Order, Supreme Court, New York County (Louis B. York, J.), entered September 26, 2008, which, to the extent appealed from as limited by the briefs, granted plaintiff's motion for renewal of a prior motion to the extent of reinstating her claim for punitive damages against defendant condominium, unanimously affirmed, without costs.

Plaintiff seeks damages based on defendant condominium board's alleged breach of fiduciary duty in connection with its decision to halt plaintiff's alteration of her first-floor commercial unit. The plans involved venting a bathroom and new mechanical equipment in the kitchen through an exterior wall and onto the terrace owned by another unit owner, who was also a board member. Plaintiff, as owner of a commercial unit, had the right to make alterations without the board's consent, to the

extent it did not create a "nuisance" or interfere with any other resident's peaceful possession or proper use of the property.

The IAS court properly granted plaintiff's motion for renewal of her prior motion to the extent of reinstating her claim for punitive damages. Punitive damages are available in a tort action where the wrongdoing is intentional or deliberate, presents circumstances of aggravation or outrage, evinces a fraudulent or evil motive, or is in such conscious disregard of the rights of another that it is deemed willful and wanton (*Prozeralik v Capital Cities Communications*, 82 NY2d 466, 479 [1993]).

Plaintiff's allegations of defendant condominium's misconduct in improperly withholding approval of her proposed alterations satisfy these criteria. Plaintiff alleges that the condominium board withdrew its prior approval at the behest of a board member whose property may have been affected by the proposed alterations. In addition, plaintiff claims that the board's action took place at a secret meeting in which the affected board member participated and where no quorum was present. Finally, plaintiff alleges that the Department of Buildings twice rejected the condominium's request to revoke her plan for renovations. If these allegations of intentional and

willful disregard of plaintiff's rights prove true, the trier of facts could well conclude that punitive damages are warranted.

M-3972 *Randa Bishop v 59 W. 12th Street Condo., et al.*

Motion seeking leave to supplement brief granted.

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

Defendant failed to preserve a video recording that may have shown the stairway before and during plaintiff's accident. The unavailability to plaintiff of the video recording may have impaired his ability to establish that defendant possessed the requisite notice of a defective condition on the stairs. Under these circumstances, however, the extreme sanction of preclusion is not warranted "to restore balance to the matter" (*Baldwin v Gerard Ave., LLC*, 58 AD3d 484 [2009]). Rather, an adverse inference is sufficient to prevent defendant from using the absence of the videotape to its own advantage (*Tomasello v 64 Franklin, Inc.*, 45 AD3d 1287 [2007]).

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the result of an error in judgment (see *Rosner v Paley*, 65 NY2d 736, 738, [1985]; *Hand v Silberman*, 15 AD3d 167 [2005], *lv denied* 5 NY3d 707 [2005]), or that they caused him damage (see *Pellegrino v File*, 291 AD2d 60, 63 [2002], *lv denied* 98 NY2d 606 [2002]).

The court properly rejected plaintiff's claim that defendants' fees were excessive, as it was unsupported by any documents or expert opinion, and since there is no indication that plaintiff ever requested an evidentiary hearing at the time of trial (see *Winter v Winter*, 50 AD3d 431, 432 [2008]; *Adler v Adler*, 203 AD2d 81 [1994]).

We have considered plaintiff's remaining contentions and find them unavailing.

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CLERK

location, and that the officers were patrolling there in response to citizen complaints, since this evidence tended to explain the presence and conduct of the police (see e.g. *People v Washington*, 259 AD2d 365 [1999], lv denied 93 NY2d 1006 [1999]); the fact that the officers described the particular building as drug-prone was not unduly prejudicial. Since defendant was charged with possession with intent to sell, the court also properly received evidence of his possession of \$337 in small bills (see e.g. *People v White*, 257 AD2d 548 [1999], lv denied 93 NY2d 930 [1999]). Even if police credibility was the main issue, intent to sell was still an essential element, and the People "were not bound to stop after presenting minimum evidence" (*People v Alvino*, 71 NY2d 233, 245 [1987]). We also note that, with respect to both the drug-prone location evidence and the cash, the court provided suitable limiting instructions that minimized any potential prejudice.

Defendant's challenges to the prosecutor's summation are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the

merits (see *People v Overlee*, 236 AD2d 133 [1997], *lv denied* 91 NY2d 976 [1998]; *People v D'Alessandro*, 184 AD2d 114, 118-119 [1992], *lv denied* 81 NY2d 884 [1993]).

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

defendant neither controlled the trust nor determined how its assets were to be distributed.

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ENTERED: OCTOBER 1, 2009

CLERK

or imprisonment." The court correctly determined the proper foundation was laid for a finding that plaintiff's memory loss had rendered her too infirm to testify at trial (see *People v Parks*, 41 NY2d 36, 46 [1976]; *Cutler v Konover*, 81 AD2d 571, 572 [1981], *affd* 55 NY2d 891 [1982]; *Wojtas v Fifth Ave. Coach Corp.*, 23 AD2d 685 [1965]). Plaintiff's treating physician testified that plaintiff's injuries severely impaired her immediate and delayed recall and abstract thinking, and her orientation to time and space, resulting in memory loss, and that these injuries and resulting deficits were causally related to the bus accident. The physician's assessment of plaintiff's limited ability to recall the events surrounding the accident was highlighted when plaintiff herself attempted to testify at trial, during which she was unable to recollect her accurate home address, the current month, the circumstances of the accident, or any details concerning her medical treatment. This was consistent with excerpts of her prior testimony read to the jury, which were incoherent and internally contradictory, and did little or nothing to advance her case.

There is also no merit to defendants' argument that the trial court erred in giving a *Noseworthy* charge, i.e., instructing the jury that if it were satisfied plaintiff had proven by clear and convincing evidence that she was suffering from memory loss caused by the accident, she would not be held to

as high a degree of proof as a plaintiff who could herself describe what happened, thus giving the jury greater latitude in inferring defendants' negligence based on circumstantial evidence. At no time during the course of the proceedings did defendants object to the *Noseworthy* charge, and thus the issue is not properly preserved for appellate review (CPLR 5501[a][3]; see *Moore v Leaseway Transp. Corp.*, 49 NY2d 720, 722 [1980]). In any event, the record reveals ample evidence from which the jury could rationally have concluded that defendants were negligent and plaintiff was not contributorily negligent, and even if the charge had erroneously been given, any such error was not "so fundamental that it preclude[d] consideration of the central issue upon which the action is founded" (*Breitung v Canzano*, 238 AD2d 901, 902 [1997]), or "prejudiced a substantial right" of defendants (CPLR 2002), so as to warrant reversal and a new trial.

Finally, in light of the extensive nature of plaintiff's brain injury resulting from the accident, and the devastating effects the injury has had on her physical being and her quality of life, the award of \$1.9 million for past and future pain and

suffering over ten years does not materially deviate from what would be reasonable compensation under the circumstances (CPLR 5501[c]; see *Hernandez v Vavra*, 62 AD3d 616, 617 [2009]).

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CLERK

of fact as to a causal connection between accident and injury (*Pommells v Perez*, 4 NY3d 566, 579-580 [2005]). In particular, plaintiff's expert failed to explain how the alleged serious injuries to plaintiff's right rotator cuff and lumbar spine might not have been related to his age, morbid obesity or prior occupation as a furniture installer (see *Chan v Garcia*, 24 AD3d 197 [2005]).

Plaintiff concedes that he failed to raise an issue of fact concerning his inability to perform substantially all of his routine daily activities for at least 90 of the first 180 days following the accident. There is no competent medical evidence on his behalf that he was unable to perform such activities (see *Prestol v McKissock*, 50 AD3d 600 [2008]).

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CLERK

lv denied 96 NY2d 736 [2001]). The probative value of this evidence outweighed its prejudicial effect, which the court minimized by means of a detailed and thorough limiting instruction.

The court's *Sandoval* ruling, permitting only limited inquiry into portions of defendant's extensive record, balanced the appropriate factors and was a proper exercise of discretion (see *People v Hayes*, 97 NY2d 203 [2002]; *People v Walker*, 83 NY2d 455, 458-459 [1994]).

We perceive no basis for reducing the sentence.

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

1092 In re Victoria J.,

A Person Alleged to be
a Juvenile Delinquent,
Appellant.

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Presentment Agency

Steven N. Feinman, White Plains, for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Susan Paulson of counsel), for presentment agency.

Order of disposition, Family Court, Bronx County (Monica Drinane, J.), entered on or about August 7, 2008, which adjudicated appellant a juvenile delinquent, upon a fact-finding determination that she had committed acts which, if committed by an adult, would constitute the crimes of robbery in the second degree and attempted assault in the second degree, and placed her with the Office of Children and Family Services for a period of 18 months, unanimously affirmed, without costs.

The court's fact-finding determination was based on legally sufficient evidence and was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the court's determinations concerning credibility and identification. The victim's testimony clearly established that appellant was not merely

present at the scene of the robbery, but that she participated by punching and kicking the victim.

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

the court to attempt to guess what grounds might support the motion.

We perceive no basis for reducing the sentence.

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CLERK

documents provide for the plant consolidation, and all the documents disclaim reliance on oral representations (see *Citibank v Plapinger*, 66 NY2d 90, 95 [1985]; *Emfore Corp. v Blimpie Assoc., Ltd.*, 51 AD3d 434 [2008]).

The court correctly dismissed the claim of negligent misrepresentation because it is predicated upon promises of future conduct, rather than statements as to "existing material fact" (*Margrove Inc. v Lincoln First Bank of Rochester*, 54 AD2d 1105 [1976], *appeal dismissed* 40 NY2d 1092 [1977]). The promissory estoppel claim was properly dismissed because it was flatly contradicted by the parties' written agreement which covered the same subject matter and expressly superseded all other prior agreements and understandings, written and oral (*cf. Prestige Foods v Whale Sec. Co., L.P.*, 243 AD2d 281, 281-282 [1997]).

We have considered plaintiff's remaining arguments and find them unavailing.

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CLERK

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

1095 Paul Rivers, Index 109112/07
Petitioner-Appellant,

-against-

Board of Education of the City
School District of the City of
New York, et al.,
Respondents-Respondents.

James R. Sandner, New York (Eric W. Chen of counsel), for
appellant.

Michael A. Cardozo, Corporation Counsel, New York (Tahirih M.
Sadrieh of counsel), for respondents.

Order, Supreme Court, New York County (Lewis Bart Stone,
J.), entered March 17, 2008, which denied petitioner's
application brought pursuant to CPLR article 78, seeking to
declare that respondents' denial of petitioner's certificate of
completion of his probationary employment and the termination of
his probationary employment were in violation of Education Law
§ 2573(1)(a), and dismissed the proceeding, unanimously affirmed,
without costs.

Petitioner, a school social worker, was notified by letter
from Eric Nadelstern, the Chief Executive Office of the
Empowerment Schools, that in accordance with section 2573(1) of
the Education Law, he was denying petitioner's certificate of
completion of his probationary service and terminating his
probationary employment. Petitioner contends that this notice

was ineffective because Nadelstern did not have the authority to issue it. However, both Nadelstern and Chancellor Klein stated that in or around September 2006, commencing with the start of the 2006-2007 school year, the Chancellor orally delegated to Nadelstern the authority to discontinue probationary service and deny completion of probation to employees.

Section 2590-h(19) of the Education Law provides that the Chancellor may “[d]elegate any of his or her powers and duties to such subordinate officers or employees as he or she deems appropriate and to modify or rescind any power and duty so delegated,” and contrary to petitioner’s assertions, nothing in the cited statute or the pertinent provisions of the Education Law require that the Chancellor’s delegations of authority be in writing. Although petitioner points to instances where the Chancellor has delegated various powers, including the power to terminate probationary employees, to principals and other employees through formal written memoranda, that does not establish that the Chancellor is required to do so. Moreover, the Legislature’s failure to include the requirement of a writing within the scope of the statute may be construed as an indication that its exclusion was intended (*see City of New York v New York Tel. Co.*, 108 AD2d 372, 375 [1985], *appeal dismissed* 65 NY2d 1052 [1985]).

Furthermore, to the extent petitioner contends that his

termination was in bad faith, this argument is unpersuasive in light of the evidence that petitioner received "unsatisfactory" ratings in "[a]ttendance and punctuality," "[p]rofessional attitude and professional growth" and "[m]aintenance of good relations with other teachers and supervisors." "Evidence in the record supporting the conclusion that performance was unsatisfactory establishes that the discharge was made in good faith" (*Matter of Johnson v Katz*, 68 NY2d 649, 650 [1986]).

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

1097 Emanuel Stratakis, etc., Index 17222/95
Plaintiff-Appellant,

-against-

Valentin Ryjov, et al.,
Defendants,

The City of New York, et al.,
Defendants-Respondents.

Bienenfeld & Wertman P.C., New York (Saul W. Bienenfeld of
counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Sharyn
Rootenberg of counsel), for respondents.

Appeal from order, Supreme Court, Bronx County (Larry S.
Schachner, J.), entered May 15, 2008, which, to the extent
appealed from, denied portions of appellant's motion denominated
one to renew and reargue defendants City of New York and New York
City Department of Transportation's motion for summary judgment
dismissing the complaint as to them, previously granted in an
order of the same court and Justice, entered March 10, 2008,
unanimously dismissed as taken from a nonappealable order,
without costs.

Although plaintiff's motion was denominated as one for
renewal and reargument, it was solely for reargument and was
treated as such by the motion court (see *Williams v City of New
York*, 19 AD3d 251 [2005]). Inasmuch as no appeal lies from the
denial of a motion to reargue, and no appeal has been taken from

the original March 10, 2008 determination granting defendant City's motion for summary judgment, plaintiff's arguments addressed to that determination are not properly before us (see *Matter of Gonzalez v New York City Clerk*, 25 AD3d 389 [2006]).

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 1, 2009

CLERK

all of them (see *People v Getch*, 50 NY2d 456, 465 [1980]).

Defendant's arguments concerning the content of the court's missing witness charge are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the merits. The charge conveyed the proper standards and its content was appropriate to the case. In any event, any error in the language employed was harmless (see *People v Crimmins*, 36 NY2d 230 [1975]).

Since the People failed to file a predicate felony statement, defendant was improperly adjudicated a second felony offender, and he is entitled to a remand for a proper adjudication and sentence. Since the defective second felony offender adjudication may have affected defendant's sentence on both the manslaughter and attempted assault convictions, we remand for a plenary resentencing.

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

the net proceeds.

Shortly thereafter, respondent notified petitioner that while going through some "old papers" in preparation for marketing the apartment, she had found a document signed by decedent making her a co-owner of the apartment. The date February 11, 1993 appears at the top of the document and it bears the apparent signature and stamp of a notary with the date stamp March 2, 1993 beside the notary's signature at the bottom. The document states that "it is my intention, via this statement, to notify all interested parties that my wife . . . is the 'co' and equal owner" of the shares in the cooperative apartment. It is undisputed that no attempt was ever made to obtain the original stock certificates from the bank holding the mortgage on the apartment in order to change the title to reflect the purported gift.

A valid inter vivos gift requires that the donor intend to make an irrevocable present transfer of ownership. There must be either physical, constructive or symbolic delivery to the donee sufficient to divest the donor of dominion and control over the property, and acceptance by the donee (see *Gruen v Gruen*, 68 NY2d 48, 53, 56-57 [1986]). The burden of proving that a gift was made must be established by the party asserting it with clear and convincing evidence (see *Matter of Carroll*, 100 AD2d 337, 338 [1984]).

Respondent failed to sustain her burden of establishing a gift to her of one-half of decedent's interest in the apartment. Serious questions exist regarding the authenticity of the transfer document since the document has no statement from the notary that he either knew the decedent, received proof of identity or that the document was signed in his presence. Additionally, respondent provided no explanation of the circumstances surrounding the gift and why she waited so long to assert her claim.

There is also insufficient evidence of delivery of the gift. Respondent did not assert that the document purporting to transfer an interest in the apartment was given to her by decedent and there is no evidence that decedent ever communicated to anyone, including the bank which held the mortgage on the apartment, that he had given respondent an interest in it. Thus, there is no evidence that decedent ever relinquished dominion and control over the shares; he was free to change his mind at any time (see *Matter of Szabo*, 10 NY2d 94, 99 [1961]). The fact that tax forms and correspondence from the management company for the cooperative were addressed to both parties is not dispositive since no proof was offered that decedent requested that

respondent's name be added to these documents. Decedent had sufficient time before his death to effectuate the transfer by notifying the bank holding the shares of the conveyance.

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CLERK

judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

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ENTERED: OCTOBER 1, 2009

CLERK

proceeding was impaired (see *People v Huston*, 88 NY2d 400 [1996]; *People v Batashure*, 75 NY2d 306, 311-312 [1990]). However, we reject defendant's argument that the People should be denied leave to re-present.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

1102-

1103-

1103A-

1103B Victor K. Kiam, et al.,
Plaintiffs-Respondents,

Index 601424/07

-against-

Park & 66th Corporation, et al.,
Defendants-Appellants.

Marin Goodman, LLP, New York (Richard P. Marin of counsel), for appellants.

Tofel & Partners, LLP, New York (Lawrence E. Tofel of counsel), for respondents.

Judgments, Supreme Court, New York County (Herman Cahn, J.), entered September 18, 2008 and September 10, 2008, after a nonjury trial, which declared, respectively, that plaintiffs have the right to have, keep and maintain a sun room built on the terrace appurtenant to their penthouse apartment and that defendants may not interfere with that right, assess any charges or receive any consideration from plaintiffs, unanimously affirmed, with costs. Appeals from orders, same court and Justice, entered on or about August 29, 2008 and September 4, 2008, unanimously dismissed as subsumed in the appeals from the aforesaid judgments.

The record reveals no basis to disturb the court's factual findings supporting its conclusion that the "exclusive use" of the roof appurtenant to the penthouse apartment afforded

plaintiffs under the proprietary lease included the right to enclose the space (see *Saperstein v Lewenberg*, 11 AD3d 289 [2004]). There is sufficient evidence to find that the board approved the initial construction of the sun room in 1968 and, in any event, ample evidence that the board knew about the room from the time of its construction and forbore to challenge the legality of the construction for some 35 years. This evidence of the board's knowing forbearance also supports the court's finding that the board waived any lease requirement of written approval for structural alterations (see *Kenyon & Kenyon v Logany, LLC*, 33 AD3d 538, 538-539 [2006]). In light of these findings, there is no merit to defendants' contentions as to corporate waste, self-dealing within the board, or illegality.

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CLERK

withheld and set forth a basis for the assertion of a privilege as to each. The motion court then conducted an in camera review of the withheld documents and ruled that most were protected by either the attorney-client privilege (CPLR 3101[b]) or the immunities for attorney work product (CPLR 3101[c]) and materials prepared for litigation (CPLR 3101[d][2]). No basis exists to disturb this ruling. Documents in an insurer's claim file that were prepared for litigation against its insured are immune from disclosure (*Grotallio v Soft Drink Leasing Corp.*, 97 AD2d 383 [1983]), and, while documents prepared in an insurer's ordinary course of business in investigating whether to accept or reject coverage are discoverable (*Brooklyn Union Gas Co. v American Home Assur. Co.*, 23 AD3d 190, 191 [2005]), there is no indication that any such documents are being protected here. We have considered plaintiff's remaining arguments and find unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

McDermott v Coffee Beanery, Ltd., 9 AD3d 195, 206 [2004]).

Defendant similarly failed to preserve his challenge to the ruling regarding the accrual of prejudgment interest, calculated from the date of the discharge rather than the date of the buyout settlement that provided defendant with the recovery from which the contingency fee was to be paid. In any event, the ruling was fair in light of the fact that defendant discharged his attorney in bad faith just before the attorney's efforts came to fruition (see CPLR 5001; *cf. Klein v Eubank*, 263 AD2d 357 [1999]).

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CLERK

Saxe, J.P., Nardelli, Catterson, McGuire, JJ.

3846

M-1607 Gulf Insurance Company,
Plaintiff-Appellant,

Index 601602/03
601077/04

-against-

Transatlantic Reinsurance Company, et al.,
Defendants,

Gerling Global Reinsurance
Corporation of America,
Defendant-Respondent.

[And Another Action]

Simpson Thacher & Bartlett LLP, New York (Mary Kay Vyskocil of
counsel), for appellant.

Pitchford Semerdjian LLP, New York (David L. Pitchford of
counsel), for respondent.

Order, Supreme Court, New York County (Richard B. Lowe III,
J.), entered November 29, 2007, modified, on the law, to the
extent of reversing that portion of the order which granted
partial summary judgment to Gerling on its reformation
counterclaims and reinstating Gulf's reformation counterclaims,
reversing that portion of the order which declared that the First
Union Policy is not covered by the 1999 treaty, and otherwise
affirmed, without costs. Motion seeking leave to strike
defendant Gerling's appellate request for summary judgment on its
rescission claims granted.

Opinion by McGuire, J. All concur.

Order filed.

Saxe, J.P., Sweeny, Moskowitz, Acosta, Richter, JJ.

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804 In re Thomas B.,
 Petitioner-Respondent,

-against-

Lydia D.,
 Respondent-Appellant.

Peter F. Edelman, New York, for appellant.

Thomas B., Sag Harbor, respondent pro se.

Order, Family Court, New York County (Gloria Sosa-Lintner, J.), entered on or about May 2, 2008; and order, same court (Nicholas J. Palos, Support Magistrate), entered on or about May 30, 2008, reversed, on the law and the facts, without costs, the objections sustained, the support arrears vacated and the matter remanded for a hearing to determine the amount of support arrears and counsel fees pursuant to the terms of the stipulation of settlement incorporated but not merged in the parties' judgment of divorce.

Opinion by Sweeny, J. All concur.

Order filed.

THE FOLLOWING MOTION ORDERS
WERE ENTERED AND FILED ON
OCTOBER 1, 2009

Gonzalez, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4143X Acorn Capital Group, LLC v Mehta

Appeal withdrawn.

Gonzalez, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4170X Peters v Coutsodontis

Appeal withdrawn.

Gonzalez, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4180 In the Matter of Jewish Association for Services for
the Aged - F., Anne

Appeals, previously perfected for the October 2009
Term, withdrawn.

Gonzalez, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-4051 BDO Seidman LLP v Strategic Resources Corporation

Motion deemed withdrawn.

Gonzalez, P.J., Andrias, Saxe, Catterson, Acosta, JJ.

M-3766 People v Beinerman, Jarrod

Leave to prosecute appeal as a poor person granted,
as indicated.

Gonzalez, P.J., Andrias, Catterson, Acosta, Abdus-Salaam, JJ.

M-3670 People v Dukes, Gerry

Notice of appeal deemed timely filed; leave to
prosecute appeal as a poor person denied, with leave to renew,
as indicated.

Gonzalez, P.J., Mazzairelli, Friedman, Nardelli, Catterson, JJ.

M-3713 People v Jones, Maleek, also known as Stroman, Jermaine

Leave to prosecute appeal as a poor person denied, with
leave to renew, as indicated.

Gonzalez, P.J., Andrias, Catterson, Acosta, Abdus-Salaam, JJ.

M-3891 People v Peavey, Debra

Leave to prosecute appeal as a poor person granted to
the extent indicated.

Gonzalez, P.J., Nardelli, Catterson, Moskowitz, Renwick, JJ.

M-2387 Pulliam v Deans Management of N.Y., Inc.

Reargument denied.

Gonzalez, P.J., Buckley, Catterson, McGuire, JJ.

M-2579 NYCTL 2004-A Trust v Fasal - Gilbert

Reargument or other relief denied.

Gonzalez, P.J., Mazzairelli, Buckley, Renwick, Abdus-Salaam, JJ.

M-3419 Sorenson v 257/117 Realty, LLC

Renewal and/or reargument denied.

Gonzalez, P.J., Andrias, Catterson, Acosta, Abdus-Salaam, JJ.

M-4078 Dodson v Dodson

Preliminary appellate injunction denied.

Tom, J.P., Sweeny, McGuire, DeGrasse, Freedman, JJ.

M-3773 People v Sanders, Gary

Notice of appeal deemed timely filed; leave to prosecute appeal as a poor person granted, as indicated.

Tom, J.P., Andrias, Saxe, Moskowitz, DeGrasse, JJ.

M-2669 AIU Insurance Company v Nationwide Mutual Insurance Company

Reargument or other relief denied.

Tom, J.P., Friedman, Nardelli, Buckley, Abdus-Salaam, JJ.

M-3305 International Plaza Associates, L.P. v Lacher;
Lacher v Nevins

Reargument denied.

Tom, J.P., Andrias, Saxe, Buckley, JJ.

M-3441 People v Bowen, Gary

Reargument denied.

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

M-4073 Brady v 450 West 31st Street Owners Corp.

Time to perfect consolidated appeals enlarged to the
January 2010 Term, as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3800 People v Vaughn, Lendell

Leave to prosecute appeal as a poor person granted,
as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3815 In the Matter of Huling v The New York City Health
& Hospitals Corporation

Leave to prosecute appeal as a poor person granted
to the extent indicated.

Mazzarelli, J.P., Saxe, Moskowitz, Renwick, Richter, JJ.

M-3949 People v Coleman, Dwaine E., also known as Coleman,
Eric

Notice of appeal deemed timely filed; leave to
prosecute appeal as a poor person granted, as indicated.

Mazzarelli, J.P., Saxe, Moskowitz, Richter, JJ.

M-3817 People v Hoden, Kwame, also known as Holden, Kwame

Assigned counsel relieved; substitution of retained
counsel denied, as unnecessary; poor person relief previously
granted by order of this Court on November 8, 2007 continued.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3771 People v Brown, Gary

Leave to prosecute appeal as a poor person denied,
with leave to renew, as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3870 In the Matter of Y., Nissim v Commissioner of Social
Services on behalf of Y., Violet

Leave to prosecute appeal as a poor person denied.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3398 Omansky v Carasso; Omansky v Gurland - 64 N. Moore Associates

Appellants directed to perfect appeals for the February 2010 Term, as indicated; Clerk directed to calendar said appeals for hearing together in said Term; motion otherwise denied.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3636 Nano Castec America, Inc. v Donz Wheelz Corporation - Adelman - Calderon - Calderon-Mendez

Time to perfect appeal enlarged to the January 2010 Term, as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3827 People ex rel. Camacho, Julio v Warden

Time to perfect appeal enlarged to the January 2010 Term.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3873 Divito v Farrell

Time to perfect appeal enlarged to the January 2010 Term, as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3882 Zimmerman v The City of New York

Time to perfect appeal enlarged to the January 2010 Term.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3897

M-3966 Verdugo v Seven Thirty One Limited Partnership -
Bovis Lend Lease LMB - Northside Structures, Inc.

Time to perfect appeal and cross appeal enlarged to the January 2010 Term, as indicated.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-4070 Sirius America Insurance Company v Burlington Insurance
Company

Time to perfect appeal enlarged to the February 2010 Term.

Mazzarelli, J.P., Moskowitz, Acosta, Freedman, Richter, JJ.

M-3802 1443 York Avenue Realty Co. v Ronning; Ronning v
1443 York Avenue Realty Co.

Leave to appeal from the Appellate Term denied.

Mazzarelli, J.P., Saxe, Moskowitz, Renwick, Richter, JJ.

M-4075 Pagano v Malpeso

Stay denied.

Mazzarelli, J.P., Saxe, Moskowitz, Renwick, Richter, JJ.

M-4043

M-4121

M-4228 Amazon.Com, LLC v New York State Department of Taxation
and Finance - Amazon Services, LLC

Leave to file briefs amicus curiae granted, as
indicated.

Saxe, J.P., Nardelli, Buckley, Acosta, Freedman, JJ.

M-3878 MVAIC v NYC East-West Acupuncture, PC

Stay granted on condition appeal perfected for the
January 2010 Term, as indicated.

Saxe, J.P., Sweeny, Moskowitz, Acosta, Richter, JJ.

M-4089 Toledo v Christo - Estate of Martinez

Appeals consolidated; time to perfect same enlarged
to the January 2010 Term, as indicated.

Saxe, J.P., Sweeny, Moskowitz, Acosta, Richter, JJ.

M-4158 Vecciarelli v King Pharmaceuticals, Inc.

Time to perfect appeal enlarged to the January 2010
Term.

Saxe, J.P., Sweeny, Moskowitz, Acosta, Richter, JJ.

M-4084 Verizon New York, Inc. v Consolidated Edison Company
of New York, Inc. - Integrated Structures Corp.;
Integrated Structures Corp. v SLCE Architects
(And other actions)

Leave to strike brief of defendant-respondent Catch
granted.

Gonzalez, P.J., Mazzairelli, Friedman, Catterson, Richter, JJ.

M-4218 In the Matter of Brett Ryan Franks,
a resigned attorney:

Petitioner reinstated as an attorney and counselor-
at-law in the State of New York, effective the date hereof, as
indicated. No opinion. All concur.

Tom, J.P., Mazzairelli, Andrias, Saxe, Nardelli, JJ.

M-1560 In the Matter of Michael Caliguiri,
a suspended attorney:

Petitioner reinstated as an attorney and counselor-
at-law in the State of New York, effective the date hereof.
No Opinion. All concur.

Mazzarelli, J.P., Saxe, Friedman, Nardelli, Buckley, JJ.

In the Matter of Attorneys Who Are in Violation
of Judiciary Law Section 468-a:

M-3599 Alana Kim Michelson, admitted on 6-2-86,
at a Term of the Appellate Division,
First Department

Respondent reinstated a retired attorney and counselor-
at-law in the State of New York, effective the date hereof.
No opinion. All concur.

Gonzalez, P.J., Tom, Friedman, Sweeny, Buckley, JJ.

M-2378 In the Matter of Menachem E. Lifshitz,
an attorney and counselor-at-law:

Respondent's name stricken from the roll of attorneys
and counselors-at-law in the State of New York, nunc pro tunc to
November 20, 2008. Opinion Per Curiam. All concur.