

a schedule of prevailing wages, plaintiffs' common-law breach of contract causes of action, asserting third-party beneficiary status, would not be preempted by section 301 of the Labor Management Relations Act of 1947 (61 Stat 156; 29 USC § 185) since the rights so conferred would be independent of the collective bargaining agreement (see *Livadas v Bradshaw*, 512 US 107, 123-124 [1994]). Labor Law § 220 applies alike to union and nonunion members working on public works projects and its requirements are nonnegotiable. While collective bargaining agreements are helpful on the issue of prevailing wage rates (see *Lingle v Norge Div. of Magic Chef*, 486 US 399, 413 n 12 [1988]), they are not necessarily determinative, and do not bear on every issue presented under Labor Law § 220.

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charges does not warrant a different conclusion (see *People v Rayam*, 94 NY2d 557 [2000]).

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costs, the motion granted and the complaint dismissed as against Chase. The Clerk is directed to enter judgment accordingly. Order, same court and Justice, entered April 12, 2007, which, inter alia, denied defendant Phoung Quoc Tran's motion and defendant Christopher E. Finger's cross motion to dismiss the complaint, unanimously modified, on the law, so as to dismiss the cause of action for fraud against defendant Finger, and otherwise affirmed, without costs.

Contrary to defendants' arguments, plaintiff's claims are not barred by the doctrine of collateral estoppel since the Civil Court proceedings in which she previously raised them were disposed of by stipulation (*Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 371 [2007]).

Defendants Chase and Finger are correct that plaintiff's cause of action for fraud is not adequately pleaded as against them. As to Chase, plaintiff alleges fraud by omission. However, "an omission does not constitute fraud unless there is a fiduciary relationship between the parties" (*SNS Bank v Citibank*, 7 AD3d 352 [2004]). Plaintiff had no relationship with Chase.

As to Finger, the attorney who represented the purchaser in a transaction in which plaintiff sold her home but which she maintains was intended to be a refinancing of her home, plaintiff fails to allege that he made any representation, fraudulent or

otherwise, to her (*National Westminster Bank v Weksel*, 124 AD2d 144, 147 [1987], *lv denied* 70 NY2d 604 [1987]).

Plaintiff's remaining causes of action against Chase are inadequately pleaded, barred by the applicable statutes of limitations, or rendered moot by the fact that defendant James Polite, who purchased plaintiff's home, paid the Chase mortgage in full prior to the commencement of this action.

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overcome the factors militating against resentencing (see e.g. *People v Marte*, __AD3d__, 843 NYS2d 279 [2007]).

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(see *People v Jones*, 90 NY2d 835 [1997]; *People v Schlaich*, 218 AD2d 398 [1996], *lv denied* 88 NY2d 994 [1996]). The sergeant made a radio transmission of his observations, including defendant's location and description. The arresting officer heard the radio broadcast and found defendant, who matched the description, near the location, and the evidence supports the inference that the arrest was lawful under the fellow officer rule (see *People v Mims*, 88 NY2d 99, 113-114 [1996]). Incident to this arrest, the police immediately made a lawful search of a bag they found on defendant's person (see *People v Smith*, 59 NY2d 454 [1983]; *People v Wylie*, 244 AD2d 247 [1997], *lv denied* 91 NY2d 946 [1998]).

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Lippman, P.J., Mazzarelli, Andrias, Buckley, Sweeny, JJ.

2279 Servio Moreno,
 Plaintiff-Respondent,

Index 106997/03

-against-

Luis Fabre,
 Defendant-Appellant.

Kelly, Rode & Kelly, LLP, Mineola (Daniel E. Cerritos of
counsel), for appellant.

Mitchell Dranow, Mineola, for respondent.

Judgment, Supreme Court, New York County (Donna M. Mills,
J.), entered December 6, 2005, after a jury verdict, awarding
plaintiff the aggregate principal sum of \$75,000 for past and
future pain and suffering, unanimously affirmed, without costs.

The trial court providently exercised its discretion in
permitting plaintiff's medical expert to testify about
plaintiff's MRI films (*St. Hilaire v White*, 305 AD2d 209 [2003]).
Defendant was properly notified that the expert would be called
to testify at trial and was given his reports, which noted that
he had reviewed plaintiff's previous medical reports that
defendant knew included the MRI report. Furthermore, the
expert's opinion of the MRI films and his conclusion about
plaintiff's condition was substantially the same as the MRI
report. In any event, defendant was not surprised or prejudiced

by plaintiff's failure to disclose that his expert would offer an opinion of the MRI films at trial since the MRI report and the expert's reports were clearly central to plaintiff's case and since the "expert's testimony did not transcend the scope of information set forth in the applicable expert disclosure form or the previously exchanged medical reports, received well before trial" (*Farrell v Gelwan*, 30 AD3d 563 [2006]).

Viewing the evidence in the light most favorable to plaintiff, it cannot be said that no valid line of reasoning and permissible inferences supports the conclusion reached by the jury that plaintiff sustained a serious injury (*Toure v Avis Rent A Car Sys.*, 98 NY2d 345 [2002]).

The trial court improperly refused the defendant's request for a missing witness charge, since the physician who treated plaintiff during the four months following the accident was the only potential witness who could testify regarding plaintiff's condition during the six months following the accident. However, such testimony was only material to plaintiff's 90/180 claim, i.e., his ability to resume his usual and customary activities for at least 90 days during the 180 days following the accident. Inasmuch as the jury was asked to return a special verdict in this case, the question of "serious injury" (Insurance Law § 5102[d]) was established with its affirmative answer to the first

question ("significant limitation of use of a body function or system"), regardless of the alternative 90/180 test of the statute.

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years to life, and otherwise affirmed.

We find the sentences excessive to the extent indicated.

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Lippman, P.J., Mazzarelli, Andrias, Buckley, Sweeny, JJ.

2283-

2283A Jersey Partners, Inc.,
Petitioner-Appellant,

Index 606119/01

-against-

Robert McCully,
Respondent-Respondent.

Greenberg Traurig, LLP, New York (Leslie D. Corwin of counsel),
for appellant.

Goodwin Procter LLP, New York (Meryl E. Wiener of counsel), for
respondent.

Resettled judgment, Supreme Court, New York County (Charles
E. Ramos, J.), entered January 24, 2007, in a proceeding pursuant
to Business Corporation Law § 623, awarding respondent dissenting
shareholder \$21,393,161, inclusive of prejudgment interest at the
rate of 9% compounded monthly, costs and disbursements, plus
postjudgment interest at the rate of 9% compounded monthly,
unanimously affirmed, with costs. Appeal from judgment, same
court and Justice, entered July 18, 2006, unanimously dismissed,
without costs, as superseded by the appeal from the resettled
judgment.

A fair interpretation of the evidence supports the trial

court's findings bearing on valuation (see *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495; *Friedman v Beway Realty Corp.*, 87 NY2d 161, 167-169 [1995]), including its acceptance of respondent's expert's valuation utilizing the market multiple, comparable transaction and discounted cash flow methods of valuation (see *Montgomery Cellular Holding Co. v Dobler*, 880 A2d 206, 215-216 [2005]), and rejection of petitioner's expert's valuation utilizing financial projections based on his own judgment (see *id.* at 215). Interest at the rate of 9% compounded monthly was properly awarded in order to adequately compensate respondent and prevent petitioner from realizing a windfall (Business Corporation Law § 623[h][6]; see *Gonsalves v Straight Arrow Publs.*, 2002 De Ch LEXIS 105, * 38-41 [2002]). We have considered petitioner's other arguments and find them unavailing.

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Lippman, P.J., Mazzarelli, Andrias, Buckley, Sweeny, JJ.

2290N Barbara McKay,
 Plaintiff-Appellant,

Index 25629/04

-against-

Dineo Khabele, M.D., et al.,
 Defendants-Respondents.

Roura & Melamed, New York (Matthew R. Kreinces of counsel), for
appellant.

Michael A. Cardozo, Corporation Counsel, New York (Cheryl Payer
of counsel), for respondent.

Order, Supreme Court, Bronx County (Douglas E. McKeon, J.),
entered October 17, 2006, which, to the extent appealed as
limited by the briefs, limited plaintiff's further depositions of
defendant Khabele and nonparty Dr. Gloria Huang, unanimously
affirmed, without costs.

The motion court did not act improvidently in limiting
further depositions of Khabele and Huang to questions related to
their notes in newly produced documents and refusing to direct
them to answer all questions to which objections had been raised
at their initial depositions. Plaintiff failed to justify
adequately a broader scope of inquiry or to demonstrate that the
limitations deprived them of deposition testimony relevant and

necessary for preparation for trial (see *Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc.*, 41 AD3d 362 [2007]; *Smukler v 12 Lofts Realty*, 178 AD2d 125 [1991]).

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Lippman, P.J., Mazzairelli, Andrias, Buckley, Sweeny, JJ.

2291 James L. Melcher,
[M-5788& Petitioner,
5842]

Index 604047/03

-against-

Hon. Herman Cahn,
Respondent,

Apollo Medical Fund
Management, L.L.C., et al.,
Additional Respondents.

Application for an order pursuant to article 78 of the Civil Practice Law and Rules and motion for a stay withdrawn, as indicated. All concur. No opinion. Order filed.

Mazzarelli, J.P., Saxe, Friedman, Marlow, Williams, JJ.

1557 In re Daniel C.,

A Person Alleged to
be a Juvenile Delinquent,
Appellant.

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Presentment Agency

Tamara A. Steckler, The Legal Aid Society, New York (Claire V. Merkin of counsel), for appellant.

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

Order of disposition, Family Court, Bronx County (Nelida Malave-Gonzalez, J.), entered on or about December 21, 2006, which adjudicated appellant a juvenile delinquent upon a fact-finding determination that he committed acts which, if committed by an adult, would constitute the crimes of unauthorized use of a vehicle in the third degree and possession of burglar's tools, and placed him on probation for a period of 12 months, unanimously affirmed, without costs.

Viewing the evidence in the light most favorable to the presentment agency (see *Matter of David H.*, 69 NY2d 792, 793 [1987]; *Matter of Denzel F.*, __ AD3d __, 2007 NY Slip Op 07492, *1 [1st Dept 2007]), and according Family Court's credibility and factual determinations the same weight as a jury verdict (see

id., __ AD3d __, 2007 NY Slip Op 07492, *1; *Matter of Michael D.*, 109 AD2d 633, 634 [1985], *affd for reasons stated below* 66 NY2d 843 [1985]), we conclude that the findings of fact on which appellant's delinquency adjudication was based were supported by sufficient evidence (see *People v Roby*, 39 NY2d 69 [1976]; *People v McCaleb*, 25 NY2d 394 [1969]). We also find that the court's findings comported with the weight of the evidence. Accordingly, the order of disposition must be affirmed.

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Tom, J.P., Mazzarelli, Saxe, Nardelli, JJ.

2102 Ena Hendricks,
 Plaintiff-Appellant,

Index 13092/03

-against-

Azeez Baksh,
 Defendant-Respondent,

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

Pollack, Pollack, Isaac & De Cicco, New York (Brian J. Isaac of
counsel), for appellant.

White & McSpedon, P.C., New York (Tracey Lyn Jarzombek of
counsel), for respondent.

Order, Supreme Court, Bronx County (Alan J. Saks, J.),
entered on or about October 26, 2006, which granted defendant-
respondent's motion for a directed verdict, unanimously reversed,
on the law, without costs, the motion denied, the complaint
reinstated and a new trial ordered.

The trial court erred in granting respondent's motion for a
directed verdict on the ground that expert testimony was
necessary for plaintiff to make a prima facie case of negligence.
Respondent admitted that two years before the accident he
repaired the area of the sidewalk in front of his home where
plaintiff tripped and fell, by covering up cobblestones with
ready-mixed cement in a box. The question of whether this repair

was performed negligently, creating a defect causing plaintiff to trip and fall, should have been left to the jury to decide.

Whether respondent used the right concrete, or poured enough of it in the right places, or should have removed the cobblestones, or failed to properly take into account the effects of weather, foot traffic and tree roots on the installation, are not matters beyond the ken of the typical juror, nor are they issues of such scientific or technical complexity as to require the explanation of an expert in order for the jury to comprehend them (*see Ortiz v City of New York*, 39 AD3d 359, 359-360 [2007], *lv denied* 9 NY3d 803 [2007]; *Franco v Muro*, 224 AD2d 579 [1996]).

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defendant is arguing that the statute is violated only when *both* omissions are present, that argument is contrary to the language of the statute. The "or the omission of both" clause is surplusage, and also makes clear that the statute is violated when both omissions are present. Accordingly, in its jury charge the court properly deleted any reference to "omission of the name of the performer or principal artist," because that portion of the statute did not apply to the facts presented (see e.g. *People v Gaines*, 74 NY2d 358, 363 [1989] ["remains unlawfully" theory of burglary should not be charged where inapplicable]). To the extent that defendant is arguing that the statute is not violated if the sole omission is either the name or the address of the manufacturer, that contention was never advanced before the trial court. Accordingly, it is not preserved for review (CPL 470.05[2]), and we decline to review it in the interest of justice.

Contrary to the People's position, defendant did preserve for appellate review her contention that the word "address" in Penal Law § 270.35 includes an Internet or Web site address. To be sure, defendant did not voice any objection when the trial court responded to the jury's inquiry whether an e-mail address or Web site address constituted an "address" within the meaning of the statute. In its response, the court instructed the jury,

inter alia, that it should use its common sense, that "the web did not [exist] in 1990 when the legislature adopted [Penal Law § 270.35]" and that "there's not been a ruling as to what constitutes an address." At the close of the People's case, however, defendant moved for a trial order of dismissal and argued that the "address" requirement had been satisfied by proof of a Web site address. In response, the trial court unequivocally stated that a "website is not an address, an address with a street" and that "[i]t is my ruling that a website is not an address under the meaning of the statute." Under these circumstances, defendant was not required to belabor her previously stated position when the trial court responded to the jury's inquiry (see CPL 470.05[2] ["a party who without success has either expressly or implicitly sought or requested a particular ruling or instruction, is deemed to have thereby protested the court's ultimate disposition of the matter ... regardless of whether any actual protest thereto was registered"]).

On the merits, however, we conclude that the term "address" does not include an internet or Web site address. In ordinary parlance, the term "address" refers to a physical location (see e.g. Webster's Third New International Dictionary [2002] [defining "address" as "7a: the designation of a place (as a

residence or place of business) where a person or organization may be found or communicated with ... b: the directions for delivery given on the outside of an object to be delivered"]; New Oxford American Dictionary [2005] [defining "address" as "the particulars of the place where someone lives or an organization is situated"), and nothing in the text of the statute suggests that a different meaning was intended (see *We're Assoc. Co. v Cohen, Stracher & Bloom*, 65 NY2d 148, 151 [1985] ["Words of ordinary import in a statute are to be given their usual and commonly understood meaning, unless it is clear from the statutory language that a different meaning was intended"]).

The jury also asked during deliberations whether "the defendant must have known that the CD was missing the manufacturer's address." In response, the court instructed the jury that the knowledge element of the statute "does not apply to the knowledge of the lack of the material on [a CD]." Defendant did not object to this instruction. Nor did defendant object during an earlier charge conference in which the trial court agreed with the prosecutor's contention that "the knowledge requirement should only apply to the selling of the CD and not to whether or not the name and address ... appears." Thereafter, the trial court issued a written decision, *inter alia*, explaining this ruling (8 Misc 3d 569, 577-580 [2005]). Whether defendant

has preserved for review his claim that the statute is not violated unless the actor knows that "the actual name and address of the manufacturer or the name of the performer or principal artist" is not disclosed presents an issue of statutory construction. A 1986 amendment to the statute defining New York's contemporaneous-objection rule, CPL 470.05(2), amended the second sentence thereof by adding to it a final clause providing that a timely protest is sufficient to preserve a question of law if, inter alia, "in reponse [sic] to a protest by a party, the court expressly decided the question raised on appeal" (CPL 470.05[2]). Regardless of whether the court "expressly decided" the question defendant now raises on appeal when it stated its agreement with the prosecutor during the charge conference, the court "expressly decided" that question in response to the jury's inquiry during deliberations.¹

Nevertheless, defendant's claim is still not preserved for review because the court did not expressly decide the question "in re[s]ponse to a protest by a party" (CPL 470.05[2]). To the contrary, the court expressly decided the question in response to the jury's inquiry. To the extent the court "expressly decided"

¹The court's subsequent, written decision simply memorialized and explained the ruling the court made in responding to the jury's inquiry.

the question during the charge conference, it did so in response to the prosecutor's statement of the People's position. At no point did defendant object or give the court any reason to believe that it disagreed with the court's instruction to the jury.

To read out of CPL 470.05(2) the requirements of a timely "protest by a party" and a causal nexus between the protest and the question "expressly decided" would violate a fundamental canon of construction. Just as "a court cannot amend a statute by inserting words that are not there" (*Chemical Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 394 [1995] [internal quotation marks and citation omitted]), it cannot amend a statute by failing to "give effect to every word of a statute" (*Matter of Yolanda D.*, 88 NY2d 790, 795 [1996]; see also *People v Hedgeman*, 70 NY2d 533, 539 [1987] ["words which define or limit the reach of statutory provisions may not be disregarded as superfluous, but must be given meaning and effect"]).

These requirements, moreover, unquestionably further the compelling public purposes that the contemporaneous-objection rule is designed to advance. A timely objection "may lead to the exclusion of the evidence objected to, thereby making a major contribution to finality in criminal litigation" (*Wainwright v Sykes*, 433 US 72, 88 [1977]). The rule also promotes society's

interest in the fairness and efficiency of criminal litigation (*People v Dekle*, 56 NY2d 835, 837 [1982] ["There is neither constitutional nor jurisprudential error in permitting guilt to be determined under a penal statute as construed by the common assumption of both attorneys and the court. To hold otherwise is to encourage gamesmanship and waste judicial resources in order to protect a defendant against a claimed error protection against which requires no more than a specific objection on his part"])). In addition, busy trial judges do not and should not give as much care and attention to the many "decisions" they make without apparent disagreement by the parties as they give to decisions that directly address the protests prompting them. Eliminating the requirements of a timely protest and a nexus between the protest and the question "expressly decided" would make little if any sense. The result would be that questions of law would be preserved for review by ill-considered decisions, less-than-fully-considered decisions and even decisions that are tantamount to off-the-cuff advisory opinions, despite the defendant's actual or tacit agreement in those decisions.

In *People v Prado* (4 NY3d 725, 726 [2004]) and *People v Feingold* (7 NY3d 288, 290 [2006]), the Court of Appeals concluded that a question of law was preserved for review because the trial court had "expressly decided" the question. Neither decision

discusses the statutory requirements of a timely protest and a causal nexus between the protest and the question "expressly decided" by the trial court. In the absence of an express holding by the Court of Appeals that no such protest or nexus is required, we cannot disregard the statutory text as superfluous (*People v Hedgeman*, 70 NY2d at 539).

Defendant never moved to suppress any of the property seized during the execution of the search warrant on the ground that although the warrant was for counterfeit CDs, pirated CDs were seized. Accordingly, this contention is also unpreserved and we decline to review it in the interest of justice.

We find the sentence excessive to the extent indicated.

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THE FOLLOWING MOTION ORDERS
WERE ENTERED AND FILED ON
DECEMBER 4, 2007

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

M-5980X Ader v Tishman Construction Corporation of Manhattan

M-5987X Logiudice v Antin

M-5988X Burton v New York Eye and Ear Infirmary - Schottenstein

M-6032X Holguin v Fein Property Management Corp.

M-6054 People v Castillo, Kelvin

M-6074X Feijoo v Iguana New York, Ltd.

M-6095X Lennon v Metro North Commuter Railroad Company -
Arginteanu

Appeals withdrawn.

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

M-5782 People v Santos, Victor

M-5783 People v Felix, Darren

M-5790 People v Tartt, Rasheem

M-5793 People v McCray, Michael

Leave to prosecute appeals as poor persons granted,
as indicated.

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

M-5794 People v Martinez, Chris

M-5820 People v Ritchie, Seth

M-5823 People v Rasuk, Hector

M-5824 People v Credle, Dondi

M-5825 People v Brunson, Shakim, also known as
Brunson, Shakim D.

Leave to prosecute appeals as poor persons granted,
as indicated.

Lippman, P.J., Mazzarelli, Marlow, Catterson, JJ.

M-5717 People v Warfield, Robert K.

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

Lippman, P.J., Mazzarelli, Friedman, Marlow, Buckley, JJ.

M-5124 In the Matter of M., Samantha and T., Amanda -
Administration for Children's Services

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

Lippman, P.J., Andrias, Nardelli, Gonzalez, JJ.

M-5355 Nieves v New York City Health and Hospital Corporation

Time to perfect appeal enlarged to the March 2008 Term.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5612 Future Purchases, LLC v The City of New York

Time to perfect appeal enlarged to the March 2008 Term.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5689 In the Matter of The City of New York v Novello

Time to perfect appeal enlarged to the April 2008 Term.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5673 Carmelengo v Phoenix Houses of New York, Inc.

Time to perfect appeal enlarged to the April 2008 Term.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5731 Cox v Microsoft Corporation

Time to perfect appeal enlarged to the June 2008 Term.

Lippman, P.J., Mazzairelli, Sullivan, Nardelli, Sweeny, JJ.

M-4484 Hirsch v Stewart

Leave to appeal from the Appellate Term granted,
as indicated.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5637 Giffuni Bros., also known as Giffuni Brothers, a
New York Partnership v Sasso

Leave to appeal from the Appellate Term and other
relief denied.

Lippman, P.J., Friedman, Sullivan, Gonzalez, Catterson, JJ.

M-5591 People ex rel. Alexander, Hans v Warden

Writ of habeas corpus denied as academic, as indicated.

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

M-5383 In the Matter of Williams v New York City Housing
Authority

Motion deemed withdrawn.

Lippman, P.J., Nardelli, Buckley, Gonzalez, Sweeny, JJ.

M-5912 Estate of Gondolfo - Peters v Goldner - Narayan -
M-5949 Nunziati, also known as Ryan - Yonkers General
M-6093 Hospital - The New York Medical Group, P.C.,
doing business as Cross County HIP-Center

Enlargement of record on appeal denied (M-5912);
cross motions granted to extent of directing plaintiff to
immediately file a corrected respondent's brief which omits any
reference to supplemental documentation submitted with respect to
the order of the Supreme Court entered on or about May 20, 2007,
which denied reargument (M-5949/M-6093).

Tom, J.P., Saxe, Sullivan, Gonzalez, Sweeny, JJ.

M-5047 In the Matter of G., B. v O., A. M.

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

Tom, J.P., Mazzarelli, Saxe, Nardelli, JJ.

M-5372 In the Matter of V., Jada - New York City
Administration for Children's Services

Motion and appeal deemed withdrawn.

Tom, J.P., Mazzarelli, Saxe, Nardelli, JJ.

M-5690 Mercer v Hammer

Appeals consolidated; time to perfect same enlarged
to the April 2008 Term, as indicated.

Tom, J.P., Friedman, Williams, McGuire, JJ.

M-5858 Ramirez v Columbia Presbyterian Hospital -
 NASA Real Estate Corp.

Stay of trial granted.

Tom, J.P., Friedman, Williams, McGuire, JJ.

M-5917 Gallagher v The New York Post
 (And a third-party action)

Stay granted.

Mazzarelli, J.P., Marlow, Williams, Catterson, JJ.

M-5045 In the Matter of S., Pedro v V., Marxist

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

Mazzarelli, J.P., Saxe, Marlow, Catterson, JJ.

M-5674 In the Matter of Andersen v Klein

Vacatur of stay granted unless appeal perfected
for the March 2008 Term, as indicated. (See M-5321, decided
simultaneously herewith.)

Saxe, J.P., Friedman, Sweeny, McGuire, JJ.

M-5321 In the Matter of Andersen v Klein

Time to perfect the appeal enlarged to the March 2008 Term; appellant directed to correct typographical error of the date of the notice of appeal to reflect that date as January 4, **2007**. (See M-5674, decided simultaneously herewith.)

Andrias, J.P., Marlow, Williams, Buckley, JJ.

M-5300 Waciak v Rudnitsky

M-5613

Appeal dismissed.

Andrias, J.P., Nardelli, Gonzalez, Sweeny, JJ.

M-5453 Kazdin v American Movie Classics Corp.

(And a third-party action)

Appeal dismissed.

Andrias, J.P., Marlow, Williams, Buckley, JJ.

M-5514 Chung, also known as Zhung v Maxam Properties, LLC

Enlargement of time to perfect appeal denied; appeal dismissed.

Andrias, J.P., Nardelli, Gonzalez, Sweeny, JJ.

M-5478 Kinberg v Kinberg
 (And another action)

 Enlargement of time to perfect appeals denied;
appellant directed to perfect her outstanding appeal(s) for
the March 2008 Term.

Andrias, J.P., Nardelli, Gonzalez, Sweeny, JJ.

M-5703 Rothstein v 400 East 54th Street Company

 Time to perfect appeal and cross appeal enlarged to
the March 2008 Term.

Andrias, J.P., Nardelli, Gonzalez, Sweeny, JJ.

M-5457 Pol v Our Lady of Mercy Medical Center

 Time to perfect appeal enlarged to the March 2008 Term.

Andrias, J.P., Marlow, Williams, Buckley, JJ.

M-5523 In the Matter of Club Deep, Inc. v New York State
 Liquor Authority

 Vacatur of the order of this Court entered on April 24,
2007 (M-1625) granted.

Andrias, J.P., Nardelli, Gonzalez, Sweeny, JJ.

M-5682 Carter v Carter

Leave to prosecute appeal as a poor person granted to the extent indicated; consolidation of appeals denied as academic, as indicated.

Saxe, J.P., Marlow, Sweeny, McGuire, JJ.

M-5667 McMurray v McMurray

Time to perfect appeal enlarged to the March 2008 Term; notice of appeal deemed valid pursuant to CPLR 5520[c].

Marlow, J.P., Williams, Gonzalez, Catterson, McGuire, JJ.

M-4981 Spierer v Bloomingdale's, a division of Federated
M-5278 Department Stores, Inc.

Vacatur/reargument or other relief denied.

Nardelli, J.P., Williams, Buckley, Catterson, McGuire, JJ.

M-5560 People v Polanco, Alberto

Counsel substituted.

Friedman, J.

M-4701 People v Brooks, Michael

Leave to appeal to this Court denied.

The following orders was entered and filed on November 29, 2007:

Lippman, P.J., Mazzarelli, Andrias, Buckley, Sweeny, JJ.

M-5853 Weissman v 20 East 9th Street Corporation

Vacatur denied.

Tom, J.P., Friedman, Williams, McGuire, JJ.

M-5551 Colon v Consolidated Edison Company of New York, Inc.

M-5760 - M.E.C. Construction Corp.

Stay denied; imposition of sanctions denied.

The following order was entered and filed on November 30, 2007:

Tom, J.P., Andrias, Gonzalez, Sweeny, JJ.

M-6056 Brotman v Battery Park City Authority - Good Look
Landscaping, Inc.

Stay of trial denied.