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COURT OF APPEALS

ELECTION LAW.

FAILURE TO FILE A COVER SHEET ACCOMPANYING A DESIGNATING PETITION IS A FATAL DEFECT.

The Court of Appeals reversing these two election matters, determined the failure to timely file a cover sheet accompanying a designating petition is a fatal defect: "For the reasons stated in Matter of Seawright v. Board of Elections in the City of New York (____ NY3d ____ [decided herewith]), the failure to timely file a cover sheet accompanying a designating petition constitutes a fatal defect. For each case: Order reversed, without costs, and petition to validate the designating petitions denied, in a memorandum. Chief Judge DiFiore and Judges Stein, Fahey, Garcia and Feinman concur. Judge Wilson dissents for reasons stated in his dissenting opinion in Matter of Seawright v. Board of Elections in the City of New York and Matter of Hawatmeh v. New York State Board of Elections (decided today)." ***Matter of Mejia v. Board of Elections in the City of New York*, 2020 N.Y. Slip Op. 02995, CtApp 5-21-20**

ELECTION LAW.

DESPITE THE HARDSHIP IMPOSED BY THE COVID-19 PANDEMIC, THE FAILURE TO TIMELY FILE A COVER SHEET ACCOMPANYING A DESIGNATING PETITION IS A FATAL DEFECT.

The Court of Appeals, in an opinion per curiam, reversing the First Department and affirmed the Third Department, over two comprehensive dissenting opinions, determined that, despite the hardship imposed by COVID-19, the failure to timely file a cover sheet accompanying a designating petition is a fatal defect: "In Matter of Seawright v. Board of Elections in the City of New York, the Appellate Division, First Department, held that — in light of the 'unique circumstances' created by the COVID-19 pandemic — the candidate's belated filing of a cover sheet and certificate of acceptance did not constitute a fatal defect (2020 N.Y. Slip Op. 02900, *1 [1st Dept May 14, 2020]). In Matter of Hawatmeh v. New York State Board of Elections, the Appellate Division, Third Department, rejected the First Department's approach and reached the opposite conclusion, holding that — notwithstanding the 'unprecedented circumstances created by the COVID-19 pandemic' — the candidate's belated filing of a certificate of acceptance was a fatal defect (2020 N.Y. Slip Op. 02907, *1-2 [3d Dept May 15, 2020]). ... We granted leave to resolve this departmental split. We now reverse in Seawright and affirm in Hawatmeh. * * * The COVID-19 pandemic has undoubtedly presented uniquely challenging circumstances for Seawright and Hawatmeh — among countless other candidates for public office. Nonetheless, as in our prior cases, we remain constrained by the express directive of the Election Law: the complete failure to file, by the applicable deadline, either a cover sheet with a designating petition or a certificate of acceptance constitutes a 'fatal defect' (Election Law § 1-106 [2]). The First Department's analysis, employed in Seawright, Mejia (___ NY3d ___ [decided herewith]), and Mujumder (___ NY3d ___ [decided herewith]), directly conflicts with that well-established statutory mandate ...". ***Matter of Seawright v. Board of Elections in the City of New York*, 2020 N.Y. Slip Op. 02993, CtApp 5-21-20**

ELECTION LAW, FRAUD.

DESIGNATING PETITION PERMEATED BY FRAUD INVALIDATED; THREE JUDGE DISSENT.

The Court of Appeals, in an opinion per curiam, reversing the Appellate Division, over a three-judge dissent, determined the designating petition was permeated by fraud and must be invalidated: "... [W]here appropriate, a court may ... conclude that, 'because of its magnitude[,]' fraud and irregularity established by clear and convincing evidence 'so permeated' the [designating] petition as a whole to call for its invalidation' ... . Based on the undisputed facts of this matter, which establish, among other things, 'that 512 out of 944 signatures submitted in the [designating] petition are backdated to dates preceding the candidate's receipt of the blank petition pages,' and that '14 of the 28 subscribing witnesses' swore that those signatures were placed on the designating petition before the blank petition pages were obtained from the printer (... cf. Election Law § 6-134 [3]), the lower courts should have concluded that this is one of those rare instances in which the designating petition is so 'permeated' by fraud 'as a whole as to call for its invalidation' ...". ***Matter of Ferreyra v. Arroyo*, 2020 N.Y. Slip Op. 02994, CtApp 5-21-20**

FIRST DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW.

DEFENDANTS' CLOSE RELATIONSHIP WITH SIGNATORIES TO CONTRACTS WITH FORUM SELECTION CLAUSES JUSTIFIED THE EXERCISE OF JURISDICTION OVER DEFENDANTS FOR PURPOSES OF JURISDICTIONAL DISCOVERY.

The First Department, in a full-fledged opinion by Justice Manzanet-Daniels, determined that defendants' close relationship with signatories to contracts with forum selection clauses justified the exercise of jurisdiction, for purposes of jurisdictional discovery: "A non-signatory may ... be bound by a forum selection clause where the non-signatory and a party to the agreement have such a 'close relationship' that it is foreseeable that the forum selection clause will be enforced against the non-signatory ... . The rationale for binding non-signatories is based on the notion that forum selection clauses 'promote stable and dependable trade relations,' and thus, that it would be contrary to public policy to allow non-signatory entities through which a party acts to evade the forum selection clause ... . * * * ... [T]he motion court did not undertake a separate minimum-contacts analysis. However, the concept of foreseeability is built into the closely-related doctrine, which explicitly requires that the relationship between the parties be such that it is foreseeable that the non-signatory will be bound by the forum selection clause. ... Thus, courts have recognized that a consent to jurisdiction by virtue of the 'close relationship' between the non-signatory and contracting party obviating the need for a separate analysis of constitutional propriety ...". ***Highland Crusader Offshore Partners, L.P. v. Targeted Delivery Tech. Holdings, Ltd.*, 2020 N.Y. Slip Op. 02991, First Dept 5-21-20**

CIVIL PROCEDURE, TAX LAW, CORPORATION LAW.

THE DOCTRINE OF "TAX ESTOPPEL" PROHIBITED DEFENDANT FROM TAKING A POSITION ON OWNERSHIP OF A CORPORATION WHICH IS CONTRARY TO STATEMENTS MADE IN CORPORATE TAX RETURNS.

The First Department, reversing Supreme Court and clarifying a prior ruling. determined the doctrine of "tax estoppel" applied to preclude defendant Elayan from taking a position contrary to the factual statements in corporate tax returns re: an ownership interest in the corporation, Edgewater: "The court improvidently exercised its discretion in failing to apply the doctrine of 'tax estoppel.' Under that doctrine, defendants' acts in filing corporate tax returns for the years 2010 through 2014, signed by defendant Elayan, which contained factual statements that plaintiff Jaber had a 75% ownership interest in Edgewater during that time period, and precludes defendants from taking a position contrary to that in this litigation ... . To the extent our decision in Matter of Bhanji v. Baluch (99 AD3d 587 [1st Dept 2012]) has been interpreted as making the doctrine generally inapplicable with respect to factual statements of ownership in tax returns, we clarify that the doctrine applies where, as here, the party seeking to contradict the factual statements as to ownership in the tax returns signed the tax returns, and has failed to assert any basis for not crediting the statements ...". ***PH-105 Realty Corp v. Elayaan*, 2020 N.Y. Slip Op. 02971, First Dept 5-21-20**

SECOND DEPARTMENT

CIVIL PROCEDURE, JUDGES, NEGLIGENCE, LABOR LAW-CONSTRUCTION LAW.

JUDGE SHOULD NOT HAVE SEARCHED THE RECORD AND, SUA SPONTE, GRANTED RELIEF NOT REQUESTED IN THE MOTION PAPERS, INCLUDING THE APPLICATION OF THE RES IPSA LOQUITUR DOCTRINE.

The Second Department, reversing (modifying) Supreme Court, determined the judge should not have, sua sponte, searched the record to grant relief that was not requested in this Labor Law §§ 200, 240(1), 241(6), negligence action. Plaintiff was injured when a portion of a ceiling fell causing a scaffold to collapse on him. The judge should not have granted summary judgment on a negligence cause of action which was not included in the motions, and should not have granted summary judgment on a res ipsa loquitur theory: "While it is well settled that the Supreme Court has the authority to search the record and grant summary judgment to a nonmoving party with respect to an issue that was the subject of a motion before the court (see CPLR 3212[b] ...), here, the court, in effect, searched the record and awarded summary judgment to the movant with respect to an issue that was not the subject of the motion before the court. ... The doctrine of res ipsa loquitur applies when the injury-causing event (1) is 'of a kind which ordinarily does not occur in the absence of someone's negligence'; (2) '[is] caused by an agency or instrumentality within the exclusive control of the defendant'; and (3) was not 'due to any voluntary action or contribution on the part of the plaintiff' ... . Contrary to the Supreme Court's determination, this is not one of 'the rarest of res ipsa loquitur cases' where the plaintiff's circumstantial evidence is so convincing and the defendant's response so weak that the inference of the defendant's negligence is inescapable ... . Although the first and third elements may be satisfied in the plaintiff's favor, based upon the limited record, this standard was not met as to the second element. Even though courts do not generally apply the requirement of exclusive control as it is literally stated or as a fixed, mechanical or rigid rule ... , the plaintiff failed to demonstrate that the plaster ceiling is 'structural' and, therefore, the obligation of

[defendant] Lexington to maintain pursuant to the terms of the lease it entered into with [defendant] Dover. Moreover, the papers do not establish the plaintiff's entitlement to summary judgment against Dover on this issue, which was raised by the court sua sponte as against Dover, and was not the subject of the plaintiff's motion as against Dover." ***Zhigue v. Lexington Landmark Props., LLC*, 2020 N.Y. Slip Op. 02948, Second Dept 5-20-20**

CONTRACT LAW.

UNDER CALIFORNIA LAW A CONTRACT WITH MUTUAL CANCELLATION CLAUSES IS VALID; THEREFORE THE CANCELLATION BY DEFENDANT WAS NOT A BREACH OF THE CONTRACT OR THE COVENANT OF GOOD FAITH.

The Second Department, reversing Supreme Court, determined the contract, which required the application of California law, and which included mutual cancellation clauses, was valid. Therefore cancellation by the defendant was not a breach of the contract or the covenant of good faith: "Contrary to the plaintiff's contention, the terms of the agreement in this case expressly permitted cancellation by either party during the initial one-year term, and the complaint therefore fails to state a viable cause of action for breach of contract. Pursuant to California law, contracts with mutual cancellation provisions are not illusory ... , and contracts that provide for a fixed duration but that also contain an express clause for termination at will are not inconsistent ... . [T]he cause of action alleging anticipatory breach seeks damages for losses allegedly arising from the defendant's failure to renew the term of the agreement. However, since the defendant properly cancelled the agreement during the initial term, there can be no recovery for anticipatory breach of contract based on any subsequent nonrenewal ... . 'It is universally recognized the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract' ... , and the Supreme Court of California has noted that it is 'aware of no reported case in which a court has held the covenant of good faith may be read to prohibit a party from doing that which is expressly permitted by an agreement' ...". ***A.D.E. Sys., Inc. v. Energy Labs, Inc.*, 2020 N.Y. Slip Op. 02911, Second Dept 5-20-20**

CRIMINAL LAW, EVIDENCE.

ALTHOUGH THE SEARCH WARRANT WAS IMPROPERLY ADDRESSED TO THE SPECIAL OPERATIONS GROUP, WHICH INCLUDED PEACE OFFICERS AS OPPOSED TO POLICE OFFICERS, THE WARRANT WAS PROPERLY ADDRESSED TO POLICE OFFICERS AS WELL; THE PARTICIPATION OF PEACE OFFICERS IN THE SEARCH WAS LIMITED AND DID NOT INVALIDATE THE SEARCH.

The Second Department determined the fact that corrections officers (i.e., peace officers) participated in a search, along with police officers, did not invalidate the search: "There is no dispute that the search warrant was properly addressed to police officers of the City of Middletown Police Department and police officers of the New York State Police (see CPL 1.20[34][a], [d]). Accordingly, the search warrant complied with the statutory requirement that it 'be addressed to a police officer whose geographical area of employment embraces or is embraced or partially embraced by the county of issuance' (CPL 690.25[1]). The defendant is correct that the search warrant was improperly addressed to the Special Operations Group, since it includes members who are not police officers within the meaning of the statute (see CPL 690.25[1]; see also CPL 2.10[25]). However, '[s]earch warrants should be tested in a commonsense and realistic manner with minor omissions and inaccuracies not affecting an otherwise valid warrant' ... . * * * Here, the record of the suppression hearing demonstrates that the Special Operations Group played a limited role in the execution of the warrant. Members of that group merely secured entry to the residence for the benefit of the police officers who actually conducted the search and recovered the physical evidence at issue." ***People v. Ward*, 2020 N.Y. Slip Op. 02943, Second Dept 5-20-20**

ELECTION LAW.

THE 'COVID-19' EXECUTIVE ORDER GENERALLY TOLLING THE STATUTE OF LIMITATIONS DID NOT EXTEND THE TIME FOR FILING A PETITION TO VALIDATE A DESIGNATING PETITION, WHICH IS GOVERNED BY ANOTHER 'COVID-19' EXECUTIVE ORDER.

The Second Department determined the petition to validate the appellant's designating petition was not timely commenced pursuant to Executive Order No. 202.8 passed in response to the COVID-19 pandemic: "... [T]he statute of limitations for commencing this Election Law article 16 proceeding was not tolled by a provision of Executive Order (Cuomo) No. 202.8 (9 NYCRR 8.202.8), issued on March 20, 2020, in response to the COVID-19 pandemic, which generally tolled limitations periods. Rather, this matter is governed by chapter 24 of the Laws of 2020, passed by the Legislature and signed into law by the Governor two days before the issuance of Executive Order No. 202.8, also in response to the COVID-19 pandemic ... . That legislation set a new date for the filing of designating petitions and specifically provided that the time to commence an Election Law article 16 proceeding 'shall be adjusted accordingly' ... . Indeed, tolling the statute of limitations when the primary election will take place on June 23, 2020, is unworkable ... for commencing Election Law article 16 proceedings, pertaining to the validity of designating petitions. We note that while the courts ceased accepting papers for filing in many legal matters due to the pandemic, they continued to accept filings of emergency Election Law applications, as such matters were deemed 'essential' by the Chief Administrative Judge ...". ***Matter of Echevarria v. Board of Elections in the City of N.Y.*, 2020 N.Y. Slip Op. 02992, Second Dept 5-21-20**

FAMILY LAW.

FATHER'S CHILD SUPPORT OBLIGATION DID NOT CEASE UPON MOTHER'S DEATH; MATERNAL GRANDFATHER'S PETITION SEEKING TO BE MADE THE CHILD-SUPPORT PAYEE RETROACTIVE TO MOTHER'S DEATH PROPERLY GRANTED.

The Second Department determined father's child support obligations did not cease upon the death of mother. The maternal grandparents were awarded sole custody of the child. The maternal grandfather's petition seeking to be made the payee of father's child support was properly granted, retroactive to the date of mother's death: "Since a child support obligation is owed to the child, not to the payee spouse, 'the death of the payee spouse does not terminate the obligation' ... . Here, the death of the mother did not terminate the father's continuing obligation under the order of support dated December 4, 2014, to support the children. It would be contrary to the statutory scheme of the Family Court Act and the important public policies it embodies for the father to no longer be liable for unpaid child support payments accrued after the mother's death where, as here, 'he neither had custody of the child[ren] nor sought to otherwise modify his child support obligation during the relevant period' ...". ***Matter of Sultan v. Khan*, 2020 N.Y. Slip Op. 02929, Second Dept 5-20-20**

FAMILY LAW, CIVIL PROCEDURE.

FAMILY COURT SHOULD NOT HAVE SUMMARILY DISMISSED MOTHER'S PETITION FOR CUSTODY OF CHILDREN LIVING OUT-OF-STATE WITHOUT FIRST DETERMINING WHETHER IT HAD EXCLUSIVE, CONTINUING JURISDICTION OVER CUSTODY ISSUES.

The Second Department determined Family Court should not have dismissed mother's petition seeking sole custody of the children, who lived out-of-state, without first making a ruling on whether it had continuing jurisdiction over custody issues: "On November 22, 2016, the Family Court issued an order (hereinafter the custody order) awarding, inter alia, joint legal custody of the subject children to the mother and the children's godmother, with primary physical custody and final decision-making authority to the godmother. ... Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, codified in article 5-A of the Domestic Relations Law, a court in this State which has made an initial custody determination has exclusive, continuing jurisdiction over that determination until it finds, as is relevant here, that it should relinquish jurisdiction because the child does not have a 'significant connection' with New York, and 'substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships' (Domestic Relations Law § 76-a[1][a] ...). ... Family Court should not have summarily dismissed the mother's petition on the ground that the children had been living with the godmother in Pennsylvania, without considering whether it had exclusive, continuing jurisdiction pursuant to Domestic Relations Law § 76-a (1) ... , and affording the mother an opportunity to present evidence as to that issue ...". ***Matter of Hodge v. Hodges-Nelson*, 2020 N.Y. Slip Op. 02926, Second Dept 5-20-20**

PERSONAL INJURY, EVIDENCE.

DEFENDANT FAILED TO DEMONSTRATE IT DID NOT HAVE CONSTRUCTIVE NOTICE OF THE BROKEN CURB WHICH ALLEGEDLY CAUSED PLAINTIFF'S SLIP AND FALL; DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED.

The Second Department, reversing Supreme Court, determined defendant did not demonstrate it did not have constructive notice of the broken curb which allegedly caused plaintiff's slip and fall: "... [T]he defendants failed to meet this burden. In support of their motion, among other things, they proffered the affidavit of the director of engineering of Mount Vernon Hospital who averred that there were no maintenance or complaint records for approximately three years preceding the accident, that he would inspect the premises approximately once a month, and that 'the sidewalk and curbing is repaired and replaced on an as needed basis.' The defendants did not proffer any evidence demonstrating when the area at issue was last inspected prior to the plaintiff's alleged accident ... . Moreover, the defendants failed to make a prima facie showing that the alleged defect that caused the plaintiff to fall was not visible and apparent, and would not have been noticed upon a reasonable inspection of the area where the plaintiff alleged she tripped and fell ...". ***Malloy v. Montefiore Med. Ctr.*, 2020 N.Y. Slip Op. 02921, Second Dept 5-20-20**

ZONING, LAND USE.

SALE OF LAND ORIGINALLY SET ASIDE FOR A CEMETERY WITHOUT RESTRICTIONS CONSTITUTED AN ABANDONMENT OF THE CEMETERY-RELATED USE-RESTRICTIONS ON THE LAND.

The Second Department, in a full-fledged opinion by Justice Connolly, determined the (1907) restrictions on land originally set aside for use as a cemetery had been abandoned (by the sale of the land in 1908) and the single-family residential zoning restrictions subsequently imposed on the land were enforceable, despite the repurchase of the land (in 1950) by the operator of the cemetery: " 'A holder of a deed of a cemetery lot . . . acquires only a privilege or license, exclusive of others, to make interments in the lot purchased, only so long as the lot remains a cemetery' ... . However, such privilege or license may be extinguished upon abandonment of the cemetery use ... . * * * ... '[W]here a cemetery has been so neglected as entirely to

lose its identity as such, and is no longer known, recognized, and respected by the public as a cemetery, it may be said to be abandoned' ... . Moreover, an affirmative act that 'undoes the character and association' of the cemetery 'and leaves the land subject to sale or to legal partition . . . loses its sacredness as a resting place for the dead' ... . Here, the 1908 sale of the 33-acre parcel ... to ... a private individual, which included the 12.5-acre parcel at issue, constituted an affirmative act of abandonment of the cemetery use of that property. The petitioner failed to submit any evidence to establish a continuous and uninterrupted relationship between itself and the persons or entities that owned the property from 1908 to 1971, when it reacquired the property ...". ***Matter of Ferncliff Cemetery Assn. v. Town of Greenburgh*, 2020 N.Y. Slip Op. 02925, Second Dept 5-20-20**

THIRD DEPARTMENT

CRIMINAL LAW, APPEALS.

COUNTY COURT'S POST-JUDGMENT DENIAL OF DEFENDANT'S SUPPRESSION MOTION, AFTER A HEARING HELD PURSUANT TO THE SECOND CIRCUIT'S ORDER RE: DEFENDANT'S PETITION FOR A WRIT OF HABEAS CORPUS, WAS AN INTERMEDIATE ORDER WHICH IS NOT APPEALABLE; MATTER REMITTED TO ALLOW COUNTY COURT TO AMEND THE JUDGMENT OF CONVICTION TO REFLECT THE RECENT DENIAL OF THE SUPPRESSION MOTION; THE AMENDED JUDGMENT OF CONVICTION WOULD THEN BE APPEALABLE.

The Third Department determined the post-judgment order denying defendant's motion to suppress his statements was an intermediate order which was not appealable. The Second Circuit, pursuant to defendant's petition for a writ of habeas corpus, ordered defendant's release unless a state court adjudicated the voluntariness of his confession (made in 1986 when defendant was 16). County Court held a new suppression hearing and issued the order denying suppression. The Third Department sent the matter back to allow the amendment of the judgment of conviction to reflect the recent denial of the suppression motion, which would then be appealable: "Although not raised by the parties, we must first address the threshold issue of the appealability of County Court's order. Indeed, an order denying a defendant's suppression motion is an unreviewable intermediate order (see CPL 450.10). Ordinarily, in the course of a criminal proceeding, suppression hearings occur prior to a judgment of conviction and are reviewed incident to the direct appeal from that judgment. Nevertheless, there are cases, including the instant appeal, where a suppression hearing occurred after entry of a judgment of conviction ... . In each of these cases, the trial court was specifically instructed that, if the defendant did not prevail in the suppression hearing, the judgment of conviction should be amended to reflect that fact ... . Here, however, the Second Circuit did not advise County Court to take this step ... , and there is no evidence in the record that an amended judgement of conviction was entered after the People prevailed at the suppression hearing. Accordingly, because an amended judgment of conviction has not been entered, we must dismiss this appeal. This harsh outcome appears at odds with the federal habeas corpus remand, which, in our view, was intended to permit review of the suppression hearing until finally decided by the court of last resort. However, this dismissal provides County Court the opportunity to amend the judgment of conviction to reflect the denial of the suppression motion, and defendant could then appeal as of right from the amended judgment of conviction (see CPL 450.10 [1])." ***People v. Dearstyne*, 2020 N.Y. Slip Op. 02951, Third Dept 5-21-20**

CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL'S REMARKS ABOUT DEFENDANT'S PRO SE MOTION TO WITHDRAW HER GUILTY PLEA CREATED A CONFLICT OF INTEREST REQUIRING THE ASSIGNMENT OF NEW COUNSEL; TWO-JUSTICE DISSENT.

The Third Department, reversing Supreme Court, over a two-justice dissent, determined the sentencing court should have assigned new counsel to defendant based upon defense counsel's remarks about defendant's pro se motion to withdraw her guilty plea, which created a conflict of interest. The dissenters argued that, before defense made the remarks evincing a conflict of interest, the sentencing judge had denied defendant's pro se motion to withdraw her plea without prejudice to retain counsel and make a new motion: "After Supreme Court agreed to adjourn sentencing, without having decided defendant's pro se motion, defense counsel requested that he be permitted to put 'a couple [of] things on the record.' Upon receiving the court's permission, defense counsel proceeded to make several detrimental statements that were adverse and prejudicial to defendant. At this point, a conflict of interest arose between defendant and defense counsel, and Supreme Court was obligated to relieve defense counsel of his representation of defendant ... . Supreme Court, however, did not acknowledge that a conflict of interest had arisen or inform defendant that she was entitled to the assignment of new counsel, should she opt to avail herself of that option. When defendant subsequently appeared in Supreme Court for sentencing, she was accompanied by her original assigned counsel. Once again, Supreme Court did not raise or address the conflict of interest that had previously arisen between defendant and defense counsel, assign new counsel or advise defendant that she was entitled to the assignment of new counsel. Defense counsel requested that defendant be granted an additional adjournment, ... stating that defendant had retained a certain named attorney, but that '[t]he funds just [had not] reached him yet. Without having afforded defendant an opportunity to confer with new counsel regarding her motion to withdraw her plea or having ruled

on that motion, Supreme Court denied the adjournment request and proceeded to sentencing. By failing to relieve defense counsel of his representation of defendant once the conflict of interest arose and to either assign new counsel or permit defendant a sufficient opportunity to retain alternate counsel to represent her, Supreme Court deprived defendant of her right to the effective assistance of counsel in connection with her motion to withdraw her plea ...". ***People v. Maldonado*, 2020 N.Y. Slip Op. 02953, Third Dept 5-21-20**

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