COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

December 30, 2016 through January 5, 2017

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

ARISTY-FARER, et al. v STATE OF NEW YORK, et al.; NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS v STATE OF NEW YORK, et al.:
1ST Dept. App. Div. order of 9/8/16; modification; leave to appeal granted by App. Div. 12/15/16;
SCHOOLS - STATE AID TO SCHOOL DISTRICTS - WHETHER PLAINTIFFS' COMPLAINTS ADEQUATELY STATED A CLAIM UNDER THE EDUCATION ARTICLE OF THE NEW YORK CONSTITUTION (ART XI, § 1) BASED ON THEIR ALLEGATIONS THAT THE UNDERFUNDING OF SCHOOL DISTRICTS THROUGHOUT THE STATE DEPRIVES STUDENTS OF THE OPPORTUNITY FOR A SOUND BASIC EDUCATION - WHETHER PLAINTIFFS' COMPLAINTS BASED ON THE EDUCATION ARTICLE SHOULD BE DISMISSED INSOFAR AS THEY RELATE TO DISTRICTS AS TO WHICH THERE WERE NO PARTICULARIZED PLEADINGS; PARTIES - STANDING - WHETHER PLAINTIFF EDUCATIONAL ADVOCACY GROUP HAS STANDING TO ASSERT EDUCATION ARTICLE CLAIMS AS TO SCHOOL DISTRICTS OTHER THAN THE SEVEN SCHOOL DISTRICTS IN WHICH THE INDIVIDUALLY NAMED PLAINTIFFS RESIDE;

Supreme Court, New York County, denied defendants' motion to dismiss the complaint in the Aristy-Farer action (4/9/14 order); denied defendant's motion to dismiss the complaint in the New Yorkers for Students' Educational Rights (NYSER) action (11/18/14 order); and granted the City of Yonkers' motion to intervene in the NYSER action as a party plaintiff (11/18/14 order); App. Div. modified the order entered 4/9/14, by dismissing the second and third causes of action, and otherwise affirmed; modified the order entered 11/18/14 in the Aristy-Farer action, by dismissing the third cause of action except insofar as it challenges the adequacy of defendant State's education funding accountability mechanisms, and otherwise affirmed; and reversed the order entered 11/18/14 in the NYSER action and denied the City's motion to intervene.

CASTRO, MATTER OF v SCHRIRO:
1ST Dept. App. Div. order of 6/28/16; reversal, leave to appeal granted by App. Div., 11/22/16; Rule 500.11 review pending;
CIVIL SERVICE - TERMINATION OF EMPLOYMENT - PLEADING - PETITION - WHETHER PROBATIONARY PUBLIC EMPLOYEE'S PLEADINGS SUFFICIENTLY RAISED AN ISSUE AS TO BAD FAITH OR ANY OTHER IMPROPER REASON FOR HIS TERMINATION, THEREBY WARRANTING DENIAL OF THE PRE-ANSWER MOTION TO DISMISS;
Supreme Court, New York County, denied the petition seeking to annul respondents' determination terminating petitioner's employment as a probationary correctional officer, and granted respondents' cross motion to dismiss the proceeding; App. Div. reversed, reinstated the petition and remanded the matter to Supreme Court for further proceedings.

MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX, &c. v MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, &c.:
1ST Dept. App. Div. order of 8/11/16; reversal; leave to appeal granted by App. Div., 12/13/16; Rule 500.11 review pending;
CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - RESIDENTIAL MORTGAGE-BACKED SECURITIES - WHETHER DEFENDANT'S ALLEGED BREACH OF A CONTRACTUAL OBLIGATION TO NOTIFY THE TRUSTEE OF DEFECTIVE LOANS GIVES RISE TO DAMAGES NOT GOVERNED BY THE "SOLE REMEDIES" RESTRICTIONS IN THE PARTIES' AGREEMENTS - WHETHER ALLEGATIONS OF GROSS NEGLIGENCE AFFECT THE ENFORCEABILITY OF CONTRACT PROVISIONS LIMITING A PARTY'S LIABILITY;
Supreme Court, New York County, among other things, granted defendant's motion to dismiss the first and second causes of action to the extent they seek damages inconsistent with the terms of the repurchase protocols and the fifth cause of action; App. Div. reversed and denied defendant's motion.

PEREZ (RAFAEL), PEOPLE v:
1ST Dept. App. Div. order of 8/4/16; affirmance of one judgment and modification of another; leave to appeal granted by Gische, J., 11/29/16; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE POLICE, WHO WERE INVESTIGATING A PATTERN OF ROBBERIES AT A NEW YORK HOUSING AUTHORITY BUILDING, WERE JUSTIFIED IN MAKING AN INVESTIGATORY STOP OF DEFENDANT AND IN SUBSEQUENTLY SEARCHING DEFENDANT FOR A WEAPON; IDENTIFICATION OF DEFENDANT - WHETHER THE SHOW UP IDENTIFICATION PROCEDURE WAS UNDULY SUGGESTIVE; CONFESSION - WHETHER DEFENDANT'S STATEMENTS TO POLICE WERE SPONTANEOUS; SENTENCE - WHETHER VACATUR OF DEFENDANT'S SENTENCE ON A CRIME FOR WHICH HE WAS SENTENCED AS A SECOND FELONY OFFENDER WAS WARRANTED WHERE THE SENTENCE ON THE PREDICATE CRIME WAS VACATED AND THE MATTER REMANDED FOR A YOUTHFUL OFFENDER DETERMINATION;
Supreme Court, Bronx County, convicted defendant, upon a plea of guilty, of assault in the second degree, and sentenced him to a term of six months, concurrent with five years' probation (3/7/05 judgment); and thereafter convicted defendant, after a jury trial, of robbery in the first degree and violation of probation, and sentenced him, on the robbery conviction, as a second felony offender, to a term of 15 years, and on the violation of probation, to a concurrent term of five years (11/29/06 judgment); App. Div. affirmed the 11/29/06 judgment and modified the 3/7/05 judgment, by vacating the sentence and remanding for a youthful offender determination, and, as so modified, affirmed.

<u>WEISSBROD, MATTER OF v DoPICO, et al.:</u>
Supreme Court, New York County, judgment of 11/22/11; dismissal of claims; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether an appeal lies as of right under CPLR 5601(b)(1) or 5601(b)(2);
PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE CONSTITUTIONALITY OF THE JUDICIARY LAW - CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS;
Supreme Court transferred three of the claims asserted in the petition to the App. Div. and dismissed the remainder of the claims.