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COURT OF APPEALS NEW FILINGS

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

January 16, 2015 through January 22, 2015

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.

CANGRO v PARK SOUTH TOWERS ASSOCIATES, et al.:
1ST Dept. App. Div. order of 12/16/14; dismissal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING APPEAL FROM A SUPREME COURT ORDER DENYING REARGUMENT AS TAKEN FROM A NON-APPEALABLE PAPER;
Supreme Court, New York County, denied plaintiff's motion for reargument of an order granting defendants' motions to dismiss plaintiff's complaint; App. Div. dismissed appeal as taken from a non-appealable paper.

CONNOLLY (JONATHAN J.), PEOPLE v:
4TH Dept. App. Div. order of 6/20/14; affirmance; leave to appeal granted by Read, J., 1/6/15;
CRIMES - EVIDENCE - RESTITUTION - EVIDENTIARY BASIS FOR AMOUNT - WHETHER THE PROCEDURES USED AT DEFENDANT'S RESTITUTION HEARING COMPORTED WITH PENAL LAW § 60.27 AND CPL 400.30 WHERE COUNTY COURT RELIED ON THE TRANSCRIPT AND EXHIBITS FROM A HEARING PREVIOUSLY CONDUCTED BY A JUDICIAL HEARING OFFICER; WHETHER THE DELAY IN IMPOSING RESTITUTION DIVESTED THE COURT OF JURISDICTION; WHETHER COUNSEL PROVIDED INEFFECTIVE ASSISTANCE;
County Court, Genesee County, determined that Erie Insurance Company is entitled to restitution of $31,796.69 from defendant; App. Div. affirmed.

DAVIDSON v STATE OF NEW YORK:
Court of Claims order of 10/7/14; denial of reargument; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exits for an appeal as of right;
MOTIONS AND ORDERS - DENIAL OF REARGUMENT OF A COURT OF CLAIMS ORDER DENYING CLAIMANT'S MOTION FOR SUMMARY JUDGMENT;
Court of Claims denied claimant's motion to reargue a Court of Claims order entered 4/3/14, which denied claimant's motion for summary judgment.

MICHAEL O. F. (ANONYMOUS), MATTER OF (AND ANOTHER PROCEEDING):
2ND Dept. App. Div. orders of 11/10/14 and 7/16/14; denial of motion (11/10/14 order) and affirmance (7/16/14 order); sua sponte examination whether the 11/10/14 App. Div. order finally determines the proceedings within the meaning of the Constitution, whether the 7/16/14 App. Div. order finally determines the proceedings within the meaning of the Constitution, and whether a substantial constitutional question is directly involved to support an appeal as of right;
PARENT, CHILD AND FAMILY - ABUSED OR NEGLECTED CHILD - APPELLATE DIVISION ORDER AFFIRMING DENIAL OF MOTION TO VACATE FACT-FINDING ORDER;
Family Court, Richmond County, denied Fausat O's motion to vacate a fact-finding order of the same court dated 4/2/12, and two dispositional orders of the same court, dated 6/27/12, and 6/28/12, respectively, made upon her failure to appear at the fact-finding and dispositional hearings; App. Div. (1) dismissed as academic, the appeal from so much of the order dated 4/24/13, as denied those branches of the motion which were to vacate the dispositional orders, as the periods of placement and supervision have expired and Joseph A., Jr., has reached 18 years of age; and

(2) affirmed the order dated 4/24/13 insofar as it denied that branch of the motion which was to vacate the fact-finding order dated 4/2/12; thereafter, App. Div., among other things, denied a pro se motion by Fausat O., in effect, for leave to appeal to the Court of Appeals.

GRAY (ROY), PEOPLE v:
1ST Dept. App. Div. order of 4/8/14; affirmance; leave to appeal granted by Smith, J., 12/18/14;
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - FAILURE TO MOVE TO REOPEN SUPPRESSION HEARING AFTER TRIAL TESTIMONY ESTABLISHED THAT DEFENDANT HAD "A STRONGER ARGUMENT THAT HIS WRITTEN STATEMENT WAS NOT ATTENUATED" THAN THE APPELLATE DIVISION BELIEVED WHEN IT PREVIOUSLY REVERSED THE TRIAL COURT'S GRANT OF DEFENDANT'S MOTION TO SUPPRESS THAT STATEMENT; EVIDENCE - AMMUNITION OF TYPE CAPABLE OF BEING USED IN HOMICIDE - WHETHER DEFENDANT WAS PREJUDICED BY THE ADMISSION INTO EVIDENCE OF LIVE AMMUNITION FOUND WHEN HIS HALF-BROTHER WAS ARRESTED;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 25 years to life; thereafter, Supreme Court denied defendant's CPL 440.10 motion to vacate the judgment of conviction; App. Div. affirmed.

RAM I, LLC, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, et al.:
1ST Dept. App. Div. order of 10/7/14; reversal; leave to appeal granted by App. Div., 1/6/15;
LANDLORD AND TENANT - RENT REGULATION - LUXURY DEREGULATION OF RENT-CONTROLLED APARTMENT UNAVAILABLE FOLLOWING ACCEPTANCE OF CERTAIN TAX BENEFITS - WHETHER AN APARTMENT THAT WAS SUBJECT TO RENT CONTROL PRIOR TO RECEIVING J-51 TAX BENEFITS REMAINS EXEMPT FROM LUXURY DEREGULATION BY VIRTUE OF ITS RENT-CONTROLLED STATUS AFTER THE J-51 BENEFITS EXPIRE, NOTWITHSTANDING THE FACT THAT IT WAS OTHERWISE QUALIFIED FOR LUXURY DEREGULATION; WHETHER DHCR'S INTERPRETATION OF ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 26-403(e)(2)(j), AS APPLIED TO THIS CASE, VIOLATES THE OWNER'S EQUAL PROTECTION RIGHTS;
Supreme Court, New York County, granted the CPLR article 78 petition of RAM I LLC seeking annulment of DHCR's determination dated 10/26/11, that the subject apartment was exempt from high-rent/high-income rent deregulation pursuant to Administrative Code of the City of New York § 26-403(e)(2)(j); App. Div. reversed, denied the petition, and dismissed the proceeding.