



*State of New York
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COURT OF APPEALS NEW FILINGS

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

January 20, 2023 through January 26, 2023

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.

MATTER OF AARON MANOR REHABILITATION v ZUCKER:

3rd Dept. App. Div. order of 5/12/22; affirmance; leave to appeal granted by the Court of Appeals, 1/10/23;

Health—Medicaid Reimbursement Rates—Whether Public Health Law § 2808(20)(d), which was enacted on April 3, 2020 and required the elimination of residual equity reimbursement retroactive to April 1, 2020 “notwithstanding any contrary provision of law, rule or regulation,” supersedes the prohibition in Public Health Law § 2807(7) on retroactive rate changes;

Supreme Court, Albany County, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, among other things, partially granted respondents' motion for summary judgment dismissing the petition/complaint; App. Div. affirmed.

ALCANTARA v ANNUCCI:

3rd Dept. App. Div. order of 3/31/22; modification; leave to appeal granted by the Court of Appeals, 1/10/23;

Crimes—Sex Offenders—Whether the Fishkill Correctional Facility satisfies the criteria governing residential treatment facilities under Correction Law § 2(6); Whether the Fishkill Correctional Facility satisfies the criteria governing residential treatment facilities under Correction Law § 73; Whether individuals held at a residential treatment facility under Correction Law § 73(10) can be held at the Fishkill Correctional Facility without the Department of Corrections and Community Supervision permitting or facilitating access to community-based employment, educational, and training opportunities for those residents; Supreme Court, Albany County, among other things, partially denied defendants' motion for summary judgment dismissing the complaint; App. Div. modified, by reversing so much of the judgment as partially denied defendants' motion for summary judgment, upon a search of the record, granted the motion in its entirety, and dismissed the complaint and, as so modified, affirmed.

BLUE (ANTHONY), PEOPLE v:

1st Dept. App. Div. order of 2/15/22; affirmance; leave to appeal granted by Wilson, J., 12/21/22;

Crimes—Search Warrant—Whether text messages and other information obtained from defendant's cell phone were properly admitted when the forensic examination of the phone occurred more than 10 days after issuance of warrant (*see* CPL 690.30 [1]); Crimes—Right to Speedy Trial—Whether defendant's statutory speedy trial rights were violated; whether time ostensibly attributed to a co-defendant's motion practice under CPL 30.30 (4) (d) was erroneously excluded when defendant had not yet been arraigned on the indictment;

Supreme Court, New York County, convicted defendant of five counts of burglary in the second degree, and sentenced him to five consecutive times of five years; Supreme Court, New York County, denied defendant's 44.10 motion; App. Div. affirmed.

CORR (MATTHEW), PEOPLE v:

2nd Dept. App. Div. order of 6/29/22; affirmance; leave to appeal granted by the Court of Appeals, 1/5/23;

Crimes—Sex Offenders—Whether, for the purpose of calculating the “twenty years from the initial date of registration” that a level one sex offender must register under Correction Law §168-h(1), the 20-year registration period should include the duration of time registered as a sex offender in another state prior to residing in New York;

Supreme Court, Kings County, after a hearing, designated defendant a level one sex offender under Correction Law article 6-C; App. Div. affirmed.

FRANKLIN (CID C.), PEOPLE v:

2nd Dept. App. Div. order of 7/6/22; reversal; leave to appeal granted by Singas, J.,

12/30/22;

Crimes—Right of Confrontation—Whether the introduction of a form prepared by an employee of the Criminal Justice Agency violated defendant's rights under the Confrontation Clause because the employee who created the form did not testify; Supreme Court, Queens County, convicted defendant of criminal possession of a weapon in the second degree, upon a jury verdict, and imposed sentence; App. Div. reversed and ordered a new trial.

GURVEY v SNY:

Court of Claims order of 4/26/21; dismissal; sua sponte examination of whether any jurisdictional basis exists for the appeal;

Appeal—Whether the claim was properly dismissed; alleged constitutional violations;

Court of Claims granted defendants' motion, dismissed the claim, and denied claimant's cross motion.

KELSEY v LENORE R.:

3rd Dept. App. Div. order of 12/22/22; affirmance; sua sponte examination of whether any jurisdictional basis exists for the appeal;

Sufficiency of Pleading—Fraud—Whether plaintiff sufficiently stated cause of action for fraud; Sanctions—alleged unconstitutionality of CPLR 8303-a;

Supreme Court, Columbia County, granted defendant's motion to dismiss the complaint and sanctioned plaintiff in the amount of \$3,000.00; App. Div. affirmed.

LIGGETT v LEW REALTY:

1st Dept. App. Div. order of 12/8/22; reversal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

Landlord and Tenant—Rent Regulation— Whether stipulation entered into by plaintiff's predecessor tenant and building owner – which provided that the initial legal regulated rent was \$1,650 per month, but required tenant to pay only \$650 per month, plus applicable Rent Guideline Board increases – was void as an impermissible waiver of rent stabilization rights;

Supreme Court, New York County, denied defendant's motion to dismiss the complaint; App. Div., with two Justices dissenting, reversed and granted the motion to dismiss the complaint.

MCDONALD (BRYAN), PEOPLE v.:

2nd Dept. App. Div. order of 7/20/22; affirmance; leave to appeal granted by the Court of Appeals on 1/5/23;

Crimes—Sex Offenders--Whether, for the purpose of calculating the “twenty years from the initial date of registration” that a level one sex offender must register under Correction Law §168-h(1), the 20-year registration period should include the duration of time registered as a sex offender in another state prior to residing in New York;

Supreme Court, Kings County, after a hearing, designated defendant a level one sex offender under Correction Law article 6-C; App. Div. affirmed.

RYAN, MATTER OF THE ESTATE OF:

3rd Dept. App. Div. order of 1/5/23; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Courts—Surrogate’s Court—Whether Surrogate’s Court providently exercised its discretion in dismissing the SCPA 1809 proceeding due to a pending Supreme Court action asserting the same essential claims; alleged constitutional violations;

Surrogate's Court, Albany County, among other things, in a proceeding pursuant to SCPA 1809, denied petitioner's motion for summary judgment determining the validity of the claim against decedent's estate and sua sponte dismissed the proceeding; App. Div. affirmed.

MATTER OF SALIS:

1st Dept. App. Div. order of 11/29/22; disbarment; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client—Disciplinary Proceedings—Disbarment;

App. Div., inter alia, disbarred appellant.

STONEHAM v BARSUK:

4th Dept. App. Div. order of 11/18/22; affirmance; leave to appeal granted by the Appellate Division, 12/27/22; Rule 500.11 review pending;

Labor—Safe Place to Work—Whether plaintiff was engaged in protected activity within meaning of Labor Law § 240(1); plaintiff, who was replacing leaking air tank on flatbed trailer's brake system, utilized a front-end loader to lift the trailer; front-end loader lifting trailer rolled backward, dropping trailer on top of plaintiff;

Supreme Court, Chautauqua County, denied plaintiff's motion for partial summary judgment and granted the cross motions of defendant David J. Barsuk for summary judgment dismissing the Labor Law § 240 (1) cause of action against him; App. Div., with dissents, affirmed.

WANG v JAMES:

4th Dept. App. Div. order of 7/8/22; affirmance; leave to appeal granted by the Court of Appeals, 1/10/23;

**Public Officers—Duty to Defend or Indemnify Public Employee—Whether
Correction Law § 24-a, providing defense and indemnification from the state,
extends to Dr. Jun Wang, a private physician who provided pathology services for a
prison-approved surgical biopsy of an incarcerated individual;
Supreme Court, Onondaga County, in a proceeding pursuant to CPLR article 78, denied
the petition; App. Div. affirmed.**