

COURT OF APPEALS NEW FILINGS

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

January 23, 2015 through January 29, 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.

MENDEZ (EDWIN), PEOPLE v:

1ST Dept. App. Div. order of 4/10/14; affirmance; leave to appeal granted by Smith, J., 12/12/14; Rule 500.11 review pending;
CRIMES - JURORS - RESPONSE TO JURY INQUIRIES - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT, ALTHOUGH THE RECORD WAS SILENT REGARDING THE TRIAL COURT'S RESPONSES TO THREE JURY NOTES, REVERSAL WAS NOT REQUIRED BECAUSE THE JURY NOTES REQUESTED MATERIALS NOT IN EVIDENCE AND THUS WERE NOT SUBSTANTIVE INQUIRIES REQUIRING COMPLIANCE WITH CPL 310.30 IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN PEOPLE v O'RAMA (78 NY2d 270 [1991]), AND ONLY NECESSITATED THE MINISTERIAL ACTION OF INFORMING THE JURY THAT NONE OF THE REQUESTED ITEMS WERE IN EVIDENCE - NOTES REQUESTING TRANSCRIPTS OF RECORDED TELEPHONE CONVERSATIONS AND

WHETHER THERE WERE ANY 911 CALLS RELATED TO THE INCIDENT;
JUSTIFICATION - WHETHER THE TRIAL COURT IMPROPERLY LIMITED
DEFENDANT'S EVIDENCE OF COMPLAINANT'S PRIOR VIOLENT ACTS;
Supreme Court, New York County, convicted defendant, after a jury
trial, of assault in the second degree, and sentenced him, as a
second felony offender, to a term of seven years; App. Div.
affirmed.

MIRANDA (NELSON), PEOPLE v:

App. Term 1ST order of 8/22/14; affirmance; leave to appeal
granted by Lippman, Ch.J., 1/14/15;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - SEARCH OF BACKPACK
INCIDENT TO LAWFUL ARREST - WHETHER THE WARRANTLESS SEARCH
INCIDENT TO ARREST WAS REASONABLE; WHETHER THE ACCUSATORY
INSTRUMENT WAS JURISDICTIONALLY DEFECTIVE;
Criminal Court of the City of New York, New York County,
convicted defendant, after a nonjury trial, of six counts of
attempted possession of burglar's tools and three counts of
attempted petit larceny and imposed sentence; App. Term affirmed.

PS 157 LOFTS LLC, et al. v AUSTIN, et al.:

1ST Dept. App. Div. order of 11/6/14; denial of motion; pending
motion to dismiss the appeal;
PUBLIC HOUSING - SUCCESSION RIGHTS - TWO-YEAR RESIDENCY
REQUIREMENT - CLAIMED IMPAIRMENT OF CONTRACT OBLIGATION; CLAIMED
DEPRIVATION OF RIGHT TO JURY TRIAL; CLAIMED DUE PROCESS
VIOLATION;
App. Div. denied respondents' motion for renewal and reargument
of its 7/24/14 order or, in the alternative, leave to appeal to
the Court of Appeals.

PS 157 LOFTS LLC, et al. v AUSTIN, et al.:

1ST Dept. App. Div. order of 7/24/14; denial of motion; sua
sponte examination of whether the order 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;
PUBLIC HOUSING - SUCCESSION RIGHTS - TWO-YEAR RESIDENCY
REQUIREMENT - CLAIMED IMPAIRMENT OF CONTRACT OBLIGATION; CLAIMED
DEPRIVATION OF RIGHT TO JURY TRIAL; CLAIMED DUE PROCESS
VIOLATION;
Civil Court of the City of New York, New York County, denied
petitioner's motion for summary judgment on the holdover
petition; App. Term reversed, granted petitioner's motion for
summary judgment, and awarded final judgment in favor of
petitioner on its cause of action for possession; App. Div.
denied respondents' motion for leave to appeal.

YANIVETH R., &c. et al. v LTD REALTY CO., et al:

1ST Dept. App. Div. order of 9/25/14; affirmance; leave to appeal
granted by Court of Appeals, 12/18/14;

LANDLORD AND TENANT - LANDLORD'S DUTY TO REMOVE LEAD PAINT - WHETHER INFANT EXPOSED TO LEAD PAINT RESIDED IN APARTMENT - INFANT CARED FOR IN HER GRANDMOTHER'S APARTMENT 10-12 HOURS PER DAY; NEGLIGENCE - VIOLATION OF STATUTORY DUTY - ADMINISTRATIVE CODE OF CITY OF NEW YORK §§ 27-2056.3, 27-2056.5; SUMMARY JUDGMENT;

Supreme Court, Bronx County, among other things, granted defendant LTD Realty Co.'s motion for summary judgment dismissing the complaint as against it; App. Div. affirmed.

RCM ELMWOOD LLC, et al. v NIZNIK:

Monroe County Court order of 12/2/14; denial of motion; sua sponte examination of whether the order finally determines the proceeding within the meaning of the Constitution and whether an appeal lies to the Court of Appeals from the order of County Court;

LANDLORD AND TENANT - EVICTION - MOTION TO STAY WARRANT OF EVICTION;

Brighton Town Court granted the relief sought by the landlord for removal of the holdover tenant, found the landlord entitled to a warrant of eviction, but stayed execution of a warrant of eviction to 11/30/14; County Court, Monroe County, denied tenant's motion for a stay of the warrant of eviction.

MATTER OF KENNETH S., &c.:

1ST Dept. App. Div. order of 10/28/14; affirmance; leave to appeal granted by Court of Appeals, 1/20/15;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER POLICE MAY LAWFULLY TAKE A JUVENILE INTO CUSTODY FOR VIOLATING A PAROLE CONDITION SET BY A COURT AS A CONDITION FOR RELEASE PENDING TRIAL; WHETHER POLICE MAY TRANSPORT A MINOR DETAINED FOR TRUANCY TO A POLICE STATION RATHER THAN TO SCHOOL; SUPPRESSION HEARING - DENIAL OF MOTION - WHETHER POLICE WERE JUSTIFIED IN CONDUCTING WARRANTLESS SEARCH OF SUSPECTED TRUANT'S BOOK BAG;

Family Court, New York County, adjudicated Kenneth S. a juvenile delinquent upon his admission that he committed an act that, if committed by an adult, would constitute unlawful possession of an air pistol, and placed him on probation for a period of 18 months; App. Div. affirmed.

TORRES v JONES, et al. (AND ANOTHER ACTION):

2ND Dept. App. Div. order of 8/13/14; affirmance; leave to appeal granted by Court of Appeals, 1/13/15;

TORTS - CIVIL RIGHTS - FALSE ARREST, FALSE IMPRISONMENT AND UNREASONABLE SEIZURE - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF FAILED TO RAISE A TRIABLE ISSUE OF FACT REGARDING THE EXISTENCE OF PROBABLE CAUSE FOR HER ARREST; MALICIOUS PROSECUTION - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF FAILED TO REBUT THE PRESUMPTION OF PROBABLE CAUSE CREATED BY THE GRAND JURY'S INDICTMENT AND FAILED TO RAISE A TRIABLE ISSUE OF FACT THAT HER ARREST AND PROSECUTION WERE MOTIVATED BY ACTUAL MALICE; QUALIFIED IMMUNITY; APPEARANCE

Supreme Court, Queens County, in an 8/10/12 order, among other things, granted defendant City of New York's motion for summary judgment dismissing the complaint in Action No. 1 insofar as asserted against it; Supreme Court, in an 11/30/12 judgment, awarded judgment in favor of defendants New York City Police Department, Irma Santiago, Denitor Guerra, and Erik Hendriks and against plaintiff, and dismissed the complaint in Action No. 2 insofar as asserted against them; App. Div. affirmed the order and judgment.