

COURT OF APPEALS NEW FILINGS

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

January 27, 2017 through February 2, 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.

DEUTSCHE BANK NATIONAL TRUST COMPANY, &c. v FLAGSTAR CAPITAL MARKETS CORPORATION, et al.:

1ST Dept. App. Div. order of 8/11/16; affirmance; leave to appeal granted by App. Div., 12/15/16; Rule 500.11 review pending;
CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - WHETHER STATUTE OF LIMITATIONS BARS A BREACH OF CONTRACT ACTION BROUGHT MORE THAN SIX YEARS AFTER SELLER MADE ALLEGEDLY FALSE REPRESENTATIONS AND WARRANTIES REGARDING LOAN UNDERLYING RESIDENTIAL MORTGAGE-BACKED SECURITIES - CONTRACT PROVISION SPECIFYING SET OF CONDITIONS THAT WOULD DELAY CAUSE OF ACTION'S ACCRUAL - ENFORCEABILITY OF ACCRUAL CLAUSE;

Supreme Court, New York County, among other things, granted defendant Quicken Loans Inc.'s motion to dismiss the breach of contract claim as time-barred; App. Div. affirmed.

THE HEYWOOD CONDOMINIUM, &c. v WOZENCRAFT, et al.:

1ST Dept. App. Div. order of 1/12/17; affirmance (11/17/14 and 9/9/15 orders) and modification (1/28/15 order); 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;

CONDOMINIUMS AND COOPERATIVES - EVICTION - WHETHER A CONDOMINIUM OWNER MAY BE EVICTED FROM THE CONDOMINIUM BY A TEMPORARY RECEIVER FOR FAILURE TO PAY CONDOMINIUM COMMON CHARGES AND RENT HE WAS DIRECTED TO PAY BY COURT ORDER; CLAIMED DUE PROCESS VIOLATIONS; Supreme Court, New York County, granted plaintiff's motion to confirm the 1/14/14 report of the Judicial Hearing Officer, determining, after a traverse hearing, that process had been properly served, and recommending the appointment of a temporary receiver, and denied defendant's cross motion to reject the report (11/17/14 order); and thereafter, among other things, granted plaintiff's motion for the appointment of a receiver and directed defendant to pay monthly rent of \$6,500 to the receiver for his use and occupancy of the condominium unit, and denied defendant's cross motion to dismiss the complaint (1/28/15 order); Supreme Court then granted the court appointed receiver's motion for a writ of assistance ejecting defendant from his condominium unit (9/9/15 order); App. Div. affirmed the 11/17/14 order; modified the 1/28/15 order to dismiss the second cause of action for money damages; and affirmed the 9/9/15 order.

LEE (GREGORY), PEOPLE v:

1ST Dept. App. Div. order of 10/27/16; affirmance; leave to appeal granted by Gesmer, J., 1/12/17; Rule 500.11 review pending;

CRIMES - ARREST - WHETHER THE POLICE HAD PROBABLE CAUSE TO ARREST DEFENDANT FOR UNLAWFUL POSSESSION OF MARIJUANA - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE INVENTORY SEARCH OF DEFENDANT'S CAR, CONDUCTED AT THE POLICE HEADQUARTERS AND NOT AT THE ARREST LOCATION, WAS A LEGITIMATE INVENTORY SEARCH; POSSESSION OF STOLEN PROPERTY - WHETHER POSSESSION OF PROPERTY THAT WAS PURCHASED WITH A STOLEN CREDIT CARD CONSTITUTES POSSESSION OF STOLEN PROPERTY; Supreme Court, New York County, convicted defendant, upon a guilty plea, of six counts of forgery in the second degree, six counts of identity theft in the first degree, two counts of criminal possession of a forged instrument in the second degree, eight counts of criminal possession of stolen property in the fourth degree and seven counts of identity theft in the third degree, and imposed sentence; App. Div. affirmed.

SMART (ANDREW), PEOPLE v:

2ND Dept. App. Div. order 8/3/16; affirmance; leave to appeal granted by Chambers, J., 1/6/17; Rule 500.11 review pending; CRIMES - IDENTIFICATION OF DEFENDANT - LINEUP - WHETHER LINEUP IS UNDULY SUGGESTIVE WHERE DEFENDANT CONTENDS HE WAS SINGLED OUT BY A TATTOO ON HIS NECK AND THE COLOR OF HIS SHIRT, AND BY THE APPARENT AGE DIFFERENCE BETWEEN HIMSELF AND THE LINEUP FILLERS; DENIAL OF DEFENDANT'S MOTION FOR SUBSTITUTION OF COUNSEL; Supreme Court, Kings County, after a jury trial, convicted defendant of two counts of murder in the first degree, attempted murder in the second degree, and two counts of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.