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COURT OF APPEALS NEW FILINGS

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

February 20, 2015 through February 26, 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.

JOHNSON (KEITH), PEOPLE v:
1ST Dept. App. Div. order of 12/16/14; reversal; leave to appeal granted by DeGrasse, J., 2/17/15;
CRIMES - HARMLESS AND PREJUDICIAL ERROR - ADMISSION IN EVIDENCE AT JOINT TRIAL OF CODEFENDANT'S STATEMENTS IMPLICATING DEFENDANT - FACIALLY INCRIMINATING STATEMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE CONFESSION OF THE NONTESTIFYING CODEFENDANT INTRODUCED AT THEIR JOINT TRIAL WAS FACIALLY INCRIMINATING SUCH THAT DEFENDANT WAS DEPRIVED OF HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION UNDER BRUTON v UNITED STATES (391 US 123 [1968]); WHETHER THE ALLEGED ERROR WAS HARMLESS;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of robbery in the second degree, petit larceny, menacing in the second degree, and possession of an imitation pistol, and sentenced him to an aggregate term of five years; App. Div. reversed and remanded the matter for a new trial.

LEACH (RAYMOND), PEOPLE v:
2ND Dept. App. Div. order of 3/5/14; affirmance; leave to appeal granted by Pigott, J., 2/3/15;
CRIMES - FITNESS TO PROCEED TO TRIAL - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT THE RECORD BELIED DEFENDANT'S CONTENTION THAT HE WAS MENTALLY INCOMPETENT TO UNDERSTAND THE NATURE OF THE CHARGES AGAINST HIM; ENFORCEMENT OF AGREEMENT - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL WAS VOLUNTARY, KNOWING AND INTELLIGENT; VALIDITY OF DEFENDANT'S GUILTY PLEA TO REDUCED CHARGE OF ATTEMPTED GRAND LARCENY IN THE THIRD DEGREE, WHERE THE PEOPLE "NEITHER FILED A REDUCED INDICTMENT NOR EXERCISED ANY OF THEIR OTHER OPTIONS PURSUANT TO CPL 210.20(6) WITHIN 30 DAYS FOLLOWING THE ENTRY" OF THE COUNTY COURT ORDER REDUCING CHARGE FROM GRAND LARCENY IN THE THIRD DEGREE; CHALLENGE TO SENTENCE AS EXCESSIVE - WHETHER DEFENDANT WAS DEPRIVED OF HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL;
County Court, Orange County, convicted defendant, upon his guilty plea, of attempted grand larceny in the third degree, and imposed sentence; App. Div. affirmed.

LEUNG, MATTER OF v NEW YORK CITY DEPARTMENT OF BUILDINGS, et al.:
2ND Dept. App. Div. judgment of 12/24/14; sua sponte examination of whether substantial constitutional question is directly involved to support an appeal ss of right;
MUNICIPAL CORPORATIONS - ILLEGAL RESIDENTIAL CONVERSIONS (ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 28-210.1) - IMPOSITION OF CIVIL PENALTIES (ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 28-202.1) - CHALLENGE TO AGENCY DETERMINATION THAT OWNER OF PREMISES LEGALLY APPROVED AS A TWO-FAMILY DWELLING VIOLATED SECTION 28-210.1 BY CONVERTING THE DWELLING INTO THREE SINGLE ROOM OCCUPANCIES ON THE SECOND FLOOR - SUBSTANTIAL EVIDENCE - ALLEGED FAILURE TO ESTABLISH THAT RESIDENCE WAS PHYSICALLY ALTERED - CHALLENGE TO DETERMINATION THAT PETITIONER FAILED TO REBUT REBUTTABLE PRESUMPTION THAT NO COMMON HOUSEHOLD EXISTED - DUE PROCESS CHALLENGE TO DEFINITIONS OF FAMILY AS USED IN THE ADMINISTRATIVE CODE;
App. Div. confirmed a determination of the Environmental Control Board of the City of New York dated 2/16/12, which affirmed a determination of an Administrative Law Judge dated 7/11/11, finding, after a hearing, that petitioner violated Administrative Code of the City of New York §§ 28-210.1 and 28-202.1; denied the CPLR article 78 petition; and dismissed the proceeding on the merits.

MILLENNIUM HOLDINGS, LLC, et al. v THE GLIDDEN COMPANY, &c.:
1ST Dept. App. Div. order of 10/7/14; affirmance; leave to appeal granted by Court of Appeals, 2/19/15;
INSURANCE - SUBROGATION RIGHTS OF INSURER - ANTISUBROGATION RULE - WHETHER THE COURTS BELOW CORRECTLY HELD THAT THE ANTISUBROGATION RULE BARS THE INSURERS FROM RECOVERING CERTAIN PAYMENTS MADE TO THEIR INSURED, MILLENNIUM HOLDINGS LLC, FOR THE DEFENSE AND INDEMNIFICATION OF NONPARTY CLAIMS THAT RESULTED FROM LEAD-BASED PAINT EXPOSURE LITIGATION;
Supreme Court, New York County, granted defendant's motion for summary judgment dismissing the claims of plaintiff Northern Assurance Company of America and intervenor-plaintiffs Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies; App. Div. affirmed.

ROGERS, MATTER OF v PRACK, &c.:
3RD Dept. App. Div. judgment of 6/26/14; confirmed determination; leave to appeal granted by Court of Appeals, 2/17/15;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - INMATE FOUND GUILTY OF ASSAULTING STAFF, ENGAGING IN VIOLENT CONDUCT AND DISTURBING THE ORDER OF THE FACILITY - WHETHER THE PENALTY OF 60-MONTHS CONFINEMENT IN THE SPECIAL HOUSING UNIT (SHU) SHOCKS THE CONSCIENCE AND IS AN ABUSE OF DISCRETION AS A MATER OF LAW - WHETHER PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE HEARING OFFICER'S DENIAL OF HIS REQUESTS TO CALL AN ADDITIONAL WITNESS AND TO PRESENT CERTAIN DOCUMENTARY EVIDENCE;
App. Div. confirmed a determination of the Commissioner of Corrections and Community Supervision, which found petitioner of violating certain prison disciplinary rules, and dismissed the CPLR article 78 petition.

SANGARAY v WEST RIVER ASSOCIATES, LLC, et al.:
1st Dept. App. Div. order of 10/30/14; affirmance; leave to appeal granted by Court of Appeals, 2/19/15;
NEGLIGENCE - SIDEWALKS - FAILURE TO MAINTAIN SIDEWALK IN REASONABLY SAFE CONDITION - PROPERTY OWNER LIABILITY UNDER ADMINISTRATIVE CODE OF CITY OF NEW YORK § 7-210 FOR INJURIES ARISING OUT OF A TRIP AND FALL DUE TO A HEIGHT DIFFERENTIAL BETWEEN TWO ADJACENT FLAGS OF PAVEMENT ON A PUBLIC SIDEWALK - WHETHER SECTION 7-210 IMPOSES LIABILITY NOT ONLY ON OWNER OF PREMISES DIRECTLY ABUTTING HEIGHT DIFFERENTIAL OVER WHICH PLAINTIFF TRIPPED, BUT ALSO ON THE OWNER OF THE NEIGHBORING PREMISES WHERE OVER 90% OF THE LOWER OF THE TWO PAVEMENT FLAGS ALLEGEDLY WAS SITUATED - COMMON-LAW LIABILITY OF OWNER OF NEIGHBORING PREMISES;
Supreme Court, New York County, granted the motion of defendant West River Associates, LLC for summary judgment dismissing the complaint and all cross claims against it; App. Div. affirmed.