

COURT OF APPEALS NEW FILINGS

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

February 17, 2017 through February 23, 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.

BLUE ISLAND DEVELOPMENT, LLC, et al., MATTER OF v TOWN OF HEMPSTEAD, et al.:

2ND Dept. App. Div. order of 10/5/16; modification; 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;
Municipal Corporations--Zoning--Whether the Appellate Division properly granted summary judgment to plaintiffs on their second cause of action seeking a judgment declaring paragraph seven of a declaration of restrictive covenants invalid and unenforceable pursuant to RPAPL 1951; whether restriction is of "no actual and substantial benefit" to the town; claimed violation of doctrines of separation of powers and home rule under article 9 of the New York State Constitution;

Supreme Court, Nassau County, granted that branch of plaintiffs' motion which was for summary judgment on the first cause of action, denied that branch of plaintiffs' motion which was for summary judgment on the second cause of action, denied defendants' cross motion for summary judgment dismissing the complaint, and remitted the matter to the Town Board of the Town of Hempstead for further proceedings; App. Div. modified by 1) deleting the provision denying that branch of plaintiffs' motion which was for summary judgment on the second cause of action and substituting therefor a provision granting that branch of the motion, 2) deleting the provision granting that branch of plaintiffs' motion which was for summary judgment on the first cause of action and substituting therefor a provision denying that branch of the motion as academic, and 3) deleting the provision remitting the matter to the Town Board of the Town of Hempstead for further proceedings; and, as so modified, affirmed, and remitted the matter to Supreme Court for entry of a judgment declaring that paragraph 7 of the subject Declaration of Restrictive Covenants is invalid and unenforceable; Supreme Court ordered that the plaintiff Blue Island Development have judgment on the second cause of action asserted in its complaint, and decreed that the restrictive covenant recorded against the subject real property, contained in the 2/21/08 Declaration of Restrictive Covenants, as modified by the 7/13/10 Modification of Declaration of Restrictive Covenants, and paragraph 7 of such, is invalid and unenforceable.

DIAZ, MATTER OF v GOLDBERG, &c., et al.:

1ST Dept. App. Div. order of 1/17/17; dismissal of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any jurisdictional basis exists to support an appeal as of right; Proceeding Against Body or Officer--Prohibition--Dismissal of petition; claimed double jeopardy violation by judge and district attorney;

App. Div. denied the CPLR article 78 application, and dismissed the petition.

FMC CORPORATION, MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

3RD Dept. App. Div. order of 10/20/16; reversal; leave to appeal granted by App. Div., 2/2/17;

Limitation of Actions--Four-Month Statute of Limitations--Whether four-month statute of limitations began to run when respondent advised petitioner that administrative order on consent was closed or when respondent issued final statement of basis selecting a remedy to address environmental contamination; environmental conservation--hazardous waste--whether respondent's selection of a remedial plan to address environmental contamination and decision to use the hazardous waste remedial fund to pay for the remediation was arbitrary and capricious;

Supreme Court, Albany County, granted respondent's motion to dismiss the CPLR article 78 petition; App. Div. reversed, denied the motion, granted the petition, and remitted the matter to Supreme Court, Albany County, for proceedings not inconsistent with the decision.

GARCIA v NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, et al.:

1ST Dept. App. Div. order of 12/16/15; affirmance; leave to appeal granted by Court of Appeals, 2/9/17;
Health--CPLR article 78 proceeding and declaratory judgment action seeking to permanently enjoin defendants-respondents from implementing and enforcing amendments to the New York City Health Code mandating that children attending certain child care, pre-kindergarten, and kindergarten programs receive an annual influenza (flu) vaccine--whether the New York City Board of Health's regulations exceeded the limit of its authority, thereby violating the separation of powers doctrine;
Supreme Court, New York County, granted plaintiffs-petitioners' motion to permanently enjoin defendants-respondents from implementing and enforcing certain amendments to the New York City Health Code, and denied defendants-respondents' cross motion to dismiss the petition.