



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

March 3, 2023 through March 9, 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 AGRAMONTE v LOCAL 461:

1st Dept. App. Div. order of 10/13/22; affirmance; leave to appeal granted by the Court of Appeals, 2/14/23;

Labor Unions—Whether the petition, alleging violations of the unincorporated union's constitution, was properly dismissed under General Associations Law § 13 and *Martin v Curran* (303 NY 276 [1951]) for failure to allege that each union member ratified or authorized the alleged violations of the union constitution concerning the election of union officers;

Supreme Court, New York County, among other things, granted the motion of respondent union to dismiss the amended petition seeking to annul an officer election conducted in February 2021 and to direct new elections, and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

PEOPLE v MICHAEL BAY:

County Court, Cortland County order of 3/15/22; affirmance; leave to appeal granted by Troutman, J., 2/15/23;

Crimes—Right to Speedy Trial—Whether the People’s certificate of compliance was invalid under CPL 30.30(1) because it was filed before disclosure of all of the discovery required under CPL 245.50; whether CPL 245.50 precludes finding an illusory statement under CPL 30.30(1) based on a discovery violation; whether, in response to a CPL 30.30(1) motion to dismiss based on a discovery violation, the court may issue a discovery sanction under CPL 245.80 in lieu of dismissal; City Court, Cortland County, convicted defendant following a non-jury trial of harassment in the second degree; County Court, Cortland County, affirmed.

AH WINES v C6 CAPITAL FUNDING:

4th Dept. App. Div. order of 9/30/22; affirmance; leave to appeal granted by the Court of Appeals, 2/9/23;

Limitations of Actions—One Year Statute of Limitations—Whether the courts below properly dismissed the causes of action based on usury as time-barred under CPLR 215(6); whether a corporate borrower seeking to challenge a confession of judgment on usury grounds must pursue relief through a plenary action, rather than by a motion to vacate, denying the borrower the ability to assert usury as an affirmative defense;

Supreme Court, Ontario County, dismissed the amended complaint; App. Div. affirmed.

MATTER OF HBC VICTOR v TOWN OF VICTOR:

4th Dept. App. Div. order of 12/23/22; annulled determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Eminent Domain—Public Use—Whether petitioner met its burden of establishing that respondent’s proposed taking does not rationally relate to any conceivable public purpose;

App. Div. annulled the determination of respondent authorizing condemnation of certain real property owned by petitioner and granted EDPL 207 petition.

NICHOLS v HOCHUL:

1st Dept. App. Div. order of 1/24/23; affirmance; sua sponte examination of 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;

Legislature--Apportionment--Whether the Constitution permits the courts below to modify constitutional deadlines to allow the Legislature (and Independent Redistricting Commission) to adopt a redrawn Assembly map, instead of a court; Supreme Court, New York County, ordered that the Independent Redistricting

Commission (IRC) initiate the constitutional process for amending the New York State Assembly maps, conduct public hearings consistent with N.Y. Const, art III, §4(c), make plans, data and information available for the public to view at least 30 days prior to the first public meeting, submit to the legislature an Assembly redistricting plan or plans and implementing legislation by April 28, 2023, to be voted upon by the legislature in a single bill, ordered that if either house of the legislature failed to approve the implementing legislation, or if the Governor vetoed such legislation, that the IRC would, within 15 days and in no case later than June 16, 2023, prepare a second redistricting plan and implementing legislation, and ordered that if either the legislature failed to approve the second plan and implementing legislation, or if the Governor vetoed it, then the legislature would introduce such implementing legislation with any amendments deemed necessary; App. Div. affirmed.

PEOPLE v JUAN PADILLA-ZUNIGA:

2nd Dept. App. Div. order of 10/12/22; affirmance; leave to appeal granted by Cannataro A.C.J., 2/10/23; Rule 500.11 review pending;

Crimes—Plea of Guilty—Whether defendant entered a knowing, voluntary, and intelligent plea; Whether defendant knowingly, voluntarily, and intelligently waived his right to appeal;

Supreme Court, Nassau County, convicted defendant of aggravated unlicensed operation of a motor vehicle in the first degree, aggravated driving while intoxicated, and leaving the scene of an accident without reporting, upon his plea of guilty, and imposed sentence; App. Div. affirmed.

MATTER OF RUOTOLO v NYDHCR:

2nd Dept. App. Div. order of 12/21/22; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal—Academic and Moot Questions—Whether proceeding was properly dismissed as moot;

Supreme Court, Kings County, granted respondent's motion to dismiss the CPLR article 78 proceeding and, in effect, dismissed the proceeding; App. Div. affirmed.

TAXI TOURS v GO NEW YORK TOURS:

1st Dept. App. Div. order of 11/3/22; affirmance; leave to appeal granted by the Court of Appeals, 2/14/23;

Monopolies—Donnelly Act—Whether the courts below correctly held that Go New York failed to state causes of action for violation of the Donnelly Act and tortious interference with prospective business relations; whether the courts below improperly applied the state pleading standard rather than the federal standard; whether the Donnelly Act prohibits a greater range of anti-competitive conduct than

the Sherman Act;

Supreme Court, New York County, granted motion by counterclaim defendant Gray Line New York Tours Inc., et al. to dismiss the counterclaim seeking recovery under the Donnelly Act and the counterclaim for tortious interference with prospective business relations; granted the motion by counterclaim defendant Big Bus Tours Limited to dismiss the counterclaims for lack of personal jurisdiction; App. Div. affirmed.

URIAS v BUTTAFUOCO & ASSOCS.:

Supreme Court, Suffolk County judgment of 2/22/22; dismissal; leave to appeal granted by the Court of Appeals 2/9/23;

Attorney and Client—Malpractice—Whether plaintiffs' cause of action seeking damages for violation of Judiciary Law § 487 was properly dismissed; whether the exclusive remedy for violations of section 487 lies in the underlying lawsuit by moving to vacate under CPLR 5015, rather than a second plenary action; whether the courts below properly granted summary judgment; whether the courts below properly denied leave to amend; whether the cause of action alleging breach of fiduciary duty was properly dismissed as duplicative of the legal malpractice cause of action;

Supreme Court, Suffolk County, denied plaintiff's motion for leave to amend the amended complaint; Supreme Court, Suffolk County, granted those branches of Buttafuoco defendants' motion which were for summary judgment dismissing the first through fifth causes of action in the amended complaint; and denied those branches of the plaintiff's cross motion which were for summary judgment on the issue of liability on the second and third causes of action; App. Div. affirmed; Supreme Court, Suffolk County, judgment in favor of Buttafuoco defendants dismissing the verified complaint insofar as asserted against them and the Buttafuoco defendants' cross claims against defendant Newman.

WEAVER v DERONDE TIRE SUPPLY:

4th Dept. App. Div. order of 12/23/22; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

Negligence—Maintenance of Premises—Whether the courts below properly granted reargument and, upon reargument, denied summary judgment;

Supreme Court, Erie County, among other things, granted the motion of plaintiff for leave to reargue his opposition to the motion of defendant Estes Express Lines for summary judgment and, upon reargument, denied the motion of defendant Estes Express Lines for summary judgment dismissing the complaint and cross claims against it; App. Div., with two Justices dissenting, affirmed.