Vol. 41 - No. 10
3/19/21

COURT OF APPEALS NEW FILINGS

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

March 12, 2021 through March 18, 2021

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.

BERNHARDT, &c. v SCHNEIDER:
2ND Dept. App. Div. order of 1/27/21; affirmance; sua sponte examination of whether the order appealed from finally determines the action and whether a substantial constitutional question is directly involved to support an appeal as of right;
Partition--Martial Residence--Whether plaintiff stated a cause of action for partition; alleged constitutional violations;
Supreme Court, Queens County, granted that branch of defendant's motion which was pursuant to CPLR 3211(a)(7) to dismiss the cause of action for partition; App. Div. affirmed.

E.S., PEOPLE ex rel. v SUPERINTENDENT, LIVINGSTON CORRECTIONAL FACILITY et al.:
4TH Dept. App. Div. order of 2/5/21; reversal with two-Justice dissents;
Crimes--Sex Offenders--Whether the mandatory school grounds condition set forth in Executive Law § 259-c(14) applies to those adjudicated youthful offenders who are serving sentences for enumerated sex offenses against victims under the age of eighteen;
Supreme Court, Livingston County, in habeas corpus proceeding, denied the petition; App. Div. reversed, converted the habeas corpus proceeding to a CPLR article 78 proceeding in the nature of mandamus, and granted the petition to the extent of annulling that part of the determination of the Board of Parole imposing upon petitioner the school grounds mandatory condition set forth in Executive Law § 259-c(14).

GALINDO (CARLOS), PEOPLE v:
Dept App. Term, 2nd, 11th and 13th Judicial Districts order of 6/12/20; reversal; leave to appeal granted by Wilson, J., 2/28/21;
Crimes--Right to Speedy Trial--Whether the 2020 amendments to CPL 30.30(1), adding a subdivision stating that "the term offense shall include vehicle and traffic law infractions," has retroactive application to cases pending on direct appeal at the time the statute was amended; whether the legislature amended the statutory language so as to abrogate case law that statutory speedy trial analysis does not apply to traffic infractions;
New York City Criminal Court, Queens County, denied defendant's motion to dismiss the accusatory instrument on statutory speedy trial grounds (order 7/27/15); thereafter, convicted defendant, upon a jury verdict, of driving while intoxicated (per se), driving while intoxicated (common law), consumption or possession of alcoholic beverages in certain motor vehicles, and unlicensed operation of a motor vehicle (judgment 8/18/16); App. Term reversed, vacated 7/27/15 order denying defendant's motion to dismiss the accusatory instrument on statutory speedy trial grounds, granted defendant's motion, and remitted fines imposed if paid.

KOYKO, &c. v CITY OF NEW YORK, et al.:
2ND Dept. App. Div. order of 12/2/20; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Municipal Corporations--Tort Liability--Whether municipality owed special duty to plaintiff so as to give rise to liability for wrongful death; plaintiff alleged that defendants were negligent in their provision of emergency medical services to the decedent; alleged constitutional violations;

Supreme Court, Kings County, denied defendants' motion, in effect, for summary judgment dismissing the complaint and granted the plaintiff's cross motion for leave to amend the complaint; App. Div. reversed, granted the defendants' motion, in effect, for summary judgment dismissing the complaint, and denied plaintiff's cross motion.

LANTIGUA (GUSTAVO), PEOPLE v:
1ST Dept. App. Div. order of 4/30/20; reversal; leave to appeal granted by Webber, J., 1/28/21;
Crimes--Vacatur of Judgment of Conviction--Whether defendant was entitled to a hearing on his CPL 440.10 motion, claiming ineffective assistance of counsel and alleging that his plea was induced by trial counsel's erroneous advice that defendant's guilty plea would not subject him to mandatory deportation; whether the motion court may consider events that occurred after defendant's guilty plea when reviewing whether defendant's motion papers sufficiently allege that he was prejudiced by counsel's alleged misadvice under Padilla v Kentucky (559 US 356 [2010]);
Supreme Court, New York County, denied, without a hearing, defendant's CPL 440.10 motion to vacate a 11/5/98 judgment of conviction; App. Div. reversed, denied defendant's CPL 440.10 motion to vacate the 11/5/98 judgment of conviction, and remanded the matter for a hearing on defendant's claim of ineffective assistance of counsel and prejudice by such misadvice, and for a decision de novo on the motion.

MAPLE MEDICAL, LLP v AREVALO, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;
Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, inter alia (1) granted that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the amount of $53,017.36; (2) denied that branch of the defendant's cross motion for summary judgment on her counterclaim for a judgment declaring that she is entitled to receive those funds; and (3) declared that the plaintiff is entitled to receive the subject funds; App. Div. reversed, denied that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the amount of $53,017.36, granted that branch of defendant's cross motion for summary judgment on her counterclaim for a judgment declaring that she is entitled to receive those funds, and remitted the matter to Supreme Court, for the entry of a judgment.

MAPLE MEDICAL, LLP v GOLDENBERG, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;
Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, (1) denied that branch of defendant's motion for summary judgment on his counterclaim for a judgment declaring him entitled to receive certain funds in the amount of $130,833.79; (2) granted that branch of plaintiff's cross motion which was for summary judgment declaring it entitled to receive those funds; and (3) declared plaintiff entitled to receive the subject funds; App. Div. reversed, granted that branch of defendant's motion for summary judgment on his counterclaim for a judgment declaring him entitled to receive funds in the amount of $130,833.79, denied that branch of the plaintiff's cross motion for a judgment declaring that it is entitled to receive the funds, and remitted the matter to Supreme Court for the entry of a judgment.

MAPLE MEDICAL, LLP v MUTIC, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;
Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, inter alia, (1) granted that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the amount of $52,000; (2) denied that branch of the cross motion of the defendant for summary judgment on his counterclaim for a judgment declaring that he is entitled to receive those funds; and (3) declared that the plaintiff is entitled to receive the subject funds; App. Div. reversed, denied that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the amount of $52,000, granted that branch of the defendant's cross motion for summary judgment on his counterclaim for a judgment declaring that he is entitled to receive those funds, and remitted the matter to Supreme Court for the entry of a judgment.

MAPLE MEDICAL, LLP v SCOTT, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;

Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, (1) denied that branch of defendant's motion for summary judgment on his counterclaim for a judgment declaring him entitled to receive certain funds in the amount of $128,148; (2) granted that branch of plaintiff's cross motion which was for summary judgment declaring it entitled to receive those funds; and (3) declared plaintiff entitled to receive the subject funds; App. Div. reversed, granted that branch of defendant's motion for summary judgment on his counterclaim for a judgment declaring him entitled to receive funds in the amount of $128,148, denied that branch of the plaintiff's cross motion for a judgment declaring that it is entitled to receive the funds, and remitted the matter to Supreme Court for the entry of a judgment.

MAPLE MEDICAL, LLP v SUNDARAM, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;
Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, (1) denied that branch of defendant's motion for summary judgment on her counterclaim for a judgment declaring him entitled to receive certain funds in the amount of $67,212; (2) granted that branch of plaintiff's cross motion which was for summary judgment declaring it entitled to receive those funds; and (3) declared plaintiff entitled to receive the subject funds; App. Div. reversed, granted that branch of defendant's motion for summary judgment on her counterclaim for a judgment declaring her entitled to receive funds in the amount of $67,212, denied that branch of the plaintiff's cross motion for a judgment declaring that it is entitled to receive the funds, and remitted the matter to the Supreme Court for the entry of a judgment.

MAPLE MEDICAL, LLP v YOUKELES, etc.:
2ND Dept. App. Div. order of 12/9/20; reversal; leave to appeal granted by App. Div., 2/26/21;

Insurance--Liability Insurance--Whether the cash consideration paid as part of the conversion from a mutual insurance company to a stock insurance company belongs to a physician who was a policy holder of the medical malpractice insurance policy or to the medical practice that employed the physician and paid the premiums on the policy;
Supreme Court, Westchester County, inter alia, (1) granted that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the principal amount of $20,000; (2) denied that branch of defendant's cross motion for summary judgment on her counterclaim for a judgment declaring that she is entitled to receive those funds; and (3) declared that the plaintiff is entitled to receive the subject funds; App. Div. reversed, denied that branch of plaintiff's motion for summary judgment declaring that it is entitled to receive certain funds in the principal amount of $20,000, granted that branch of the cross motion of the defendant for summary judgment on her counterclaim for a judgment declaring that she is entitled to receive those funds, and remitted the matter to Supreme Court for the entry of a judgment.

TRENTON BUSINESS ASSISTANCE CORPORATION, &c., v O'CONNELL, &c.:
2ND Dept. App. Div. order of 2/10/21; modification; 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;
Constitutional Law--Equal Protection of Laws--Whether plaintiff--a not-for-profit corporation that is incorporated in New Jersey, authorized to do business in New York, and a certified development company under the United States Small Business Administration's 504 Loan Program--stated a cause of action, alleging that, as applied to plaintiff, the requirement that, while operating as a certified development company in New York, it pay a mortgage recording tax pursuant to Tax Law § 253 (1), while its New York-based competitors were afforded an exemption under Not–For–Profit Corporation Law § 1411(f), violated the Equal Protection Clause of the United States Constitution, the Commerce Clause of the United States Constitution, and the Equal Protection Clause of the New York Constitution;
Supreme Court, Nassau County, insofar as appealed from, granted those branches of the motion of the defendants Nonie Manion, in her official capacity as Executive Deputy Commissioner of the New York State Department of Taxation and Finance, and Thomas DiNapoli, in his office capacity as New York State Comptroller, pursuant to CPLR 3211(a) which were to dismiss the causes of action for a judgment declaring that Tax Law § 253(1) and Not-For-Profit Corporation Law § 1411(f), as applied to plaintiff, violate the Equal Protection Clause and Commerce Clause of the United States Constitution and the Equal Protection Clause of the New York Constitution; App. Div. modified, by deleting

the provisions thereof granting those branches of the motion of the defendants Nonie Manion, in her official capacity as Executive Deputy Commissioner of the New York State Department of Taxation and Finance, and Thomas DiNapoli, in his official capacity as New York State Comptroller, which were pursuant to CPLR 3211(a) to dismiss the causes of action for a judgment declaring that Tax Law §253(1) and Not-For-Profit Corporation Law §1411(f), as applied to plaintiff, violate the Equal Protection Clause and the Commerce Clause of the United States Constitution and the Equal Protection Clause of the New York Constitution and adding thereto provisions deeming those branches of the motion to be for declaratory judgments in those defendants' favor, and thereupon granting those branches of the motion, as so modified, affirmed the order insofar as appealed from, and remitted the matter to the Supreme Court for entry of a judgment in accordance with the court's decision.