

COURT OF APPEALS NEW FILINGS

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

March 10, 2017 through March 16, 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.

COLLATERAL LOANBROKERS ASSOCIATION OF NEW YORK, INC., et al. v THE CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 2/7/17; reversal; 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;
Injunctions--Preliminary Injunction--Action seeking declaratory judgment that various statutes and local laws and rules authorizing warrantless searches of plaintiffs' records memorializing customer transactions are unconstitutional facially and as applied--privacy rights of collateral pawnbrokers and dealers in second-hand articles--whether the Appellate Division erred in denying plaintiffs' motion for a preliminary injunction;

Supreme Court, Bronx County, among other things, granted plaintiffs' motion for a preliminary injunction enjoining defendants from enforcing General Business Law § 45, New York City Charter §§ 435 and 436, Local Law No. 149 of 2013 and its amendments to Administrative Code §§ 20-267, 20-273, and 20-277, Rules of City of New York Department of Consumer Affairs (6 RCNY) § 1-16 and Police Department (38 RCNY) §§ 21-03(a) and (b), 21-04(a) and (c), 21-07(a)-(f), and 21-08, and the procedures outlined in a 1998 memorandum by then NYPD Deputy Commissioner of Legal Matters George A. Grasso, and in NYPD Patrol Guide Procedure No. 214-38; App. Div. reversed, and denied plaintiffs' motion for a preliminary injunction.

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 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.

GUIDANCE ENHANCED GREEN TERRAIN, LLC, v BANK OF AMERICA MERRILL LYNCH &c. et al.:

1ST Dept. App. Div. order of 1/5/17; reversal; leave to appeal granted by App. Div., 2/28/17;
Contracts--Breach or Performance of Contract--Assignments--Scope of Assignment--Whether plaintiff assignor had a contractual right to compel defendant assignee to reassign bankruptcy claims to a third party as a condition of settlement--Covenants--covenant of good faith and fair dealing--whether plaintiff stated a claim that defendant assignee breached the covenant of good faith and fair dealing in withholding its consent to the proposed settlement;
Supreme Court, New York County, granted defendants' motion to dismiss the first cause of action for breach of repudiation of contract; App. Div. reversed and denied the motion.

PAPA et al., &c. v ASSOCIATED INDEMNITY CORPORATION, et al.:

4TH Dept. App. Div. order of 2/10/17; modification with dissents; Rule 500.11 review pending;
Insurance--Construction of Policy--Exclusion in an all-risk insurance policy--whether the language of the policy exclusion unambiguously applies to the water damage plaintiffs experienced in the basement of their commercial property;

Supreme Court, Erie County, denied the motions of defendants D&D Power, Inc. and Associated Indemnity Corporation for summary judgment dismissing the complaints against them, and granted plaintiffs' cross motion for partial summary judgment against defendant Associated Indemnity Corporation; App. Div. modified by granting the motion of defendant Associated Indemnity Corporation and dismissing the complaint against it, and denying plaintiffs' cross motion, and as so modified, affirmed.

SKANSKA USA BUILDING, INC. v ATLANTIC YARDS B2
OWNER, LLC, et al.:

1ST Dept. App. Div. order of 10/20/16; modification with dissents; leave to appeal granted by App. Div., 3/2/17; Contracts--Breach or Performance of Contract--Construction maintenance contract for construction of high-rise residential tower in the Atlantic Yards project in Brooklyn--whether the Appellate Division erred in its interpretation of Lien Law § 5 as it applied to the security provided for contractor payment in this project--nature of bond or undertaking required to be posted for labor and materials furnished for work on public improvement; corporations--piercing of corporate veil--whether the Appellate Division erred in finding that plaintiff failed to plead a veil-piercing claim; attorney and client--disqualification--whether the Appellate Division erred in declining to disqualify one of defendants' law firms based on a conflict of interest; Supreme Court, New York County, among other things, granted the motion of defendants Atlantic Yards and Forest City Ratner Companies to dismiss subparts (f) and (h) of the first cause of action and denied the motion as to subparts (a), (b) and (c) of that cause of action and as to the third cause of action, and denied plaintiff's motion to disqualify the law firm of Troutman Sanders LLP as defendants' attorneys; App. Div. modified to dismiss the motion of defendants Atlantic Yards and Forest City Ratner Companies to dismiss subpart (h) of the first cause of action and to grant their motion to dismiss the third cause of action, and otherwise affirmed.

VALENTE, et al. v LEND LEASE (US) CONSTRUCTION LMB, INC., et al.:

1ST Dept. App. Div. order of 10/25/16; affirmance; leave to appeal granted by App. Div., 2/21/17; Rule 500.11 review pending; Negligence--Proximate Cause--Slip and fall on grease on planks used as makeshift ramp to descend from top of building to a scaffold--prima facie showing that fall was covered by Labor Law § 240 (1)--whether defendants raised an issue of fact as to whether plaintiff was the sole proximate cause of the accident because he chose to use the planks instead of using or constructing a proper ramp; summary judgment; Supreme Court, New York County, among other things, granted plaintiffs' motion for partial summary judgment on the Labor Law § 240(1) claim; App. Div. affirmed.