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COURT OF APPEALS NEW FILINGS

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

June 12, 2020 through June 18, 2020

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.

MULLER, MATTER OF v SQUARE DEAL MACHINING, INC., et al.; WORKERS' COMPENSATION BOARD:
3RD Dept. App. Div. order of 5/7/20; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Workers' Compensation--Whether the Board's role permitting claimant to not serve the carrier's attorney with notice of claimant's application for Board review (*see* 12 NYCRR 300.13)--although requiring service upon the carrier--impinges upon the carrier's right to counsel and, therefore, is unconstitutional, unreasonable, arbitrary, capricious and without rational basis;
Worker's Compensation Board's ruling, among other things, that claimant sustained a casually-related occupational disease and set a date of disablement; App. Div. affirmed.

SIMON v FRANCINVEST, S.A.:
1ST Dept. App. Div. orders of 12/3/19 and 2/25/20; modification and denial of motion, respectively; sua sponte examination of whether the orders appealed from finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved in the Appellate Division order;
Corporations--Shareholders' Derivative Action--alleged constitutional violations;
Supreme Court, New York County, granted in part defendants' motion to dismiss, and granted defendants Fifth Avenue Surgery Center, LLC (FASC), Charles Raab and VCC, Inc. d/b/a Cicero Consulting Associates' (CCA) motions for summary judgment; App. Div. modified, by denying defendants' motion to dismiss the ninth claim for fraud and otherwise affirmed, and, therefore, denied (1) a motion for reargument and for leave to appeal and (2) a separate motion to take judicial notice of, and supplement the record with, certain documents pertinent to the motion for reargument.

U.S. BANK NATIONAL ASSOCIATION, &c. v CREATIVE ENCOUNTERS LLC et al.:
3RD Dept. App. Div. order of 5/14/20; reversal with two-Justice dissent; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any claims asserted by or against any party remain pending;
Mortgages--Whether the mortgagee's voluntary discontinuance of the first two mortgage foreclosure actions, without more, constituted an affirmative revocation of the initial acceleration of the mortgage debt, such that the debt was de-accelerated within the applicable statute of limitations and this action is not time-barred;
Supreme Court, Rensselaer County, among other things, denied motion by defendants Paul Jo Tufano and Creative Encounters LLC for summary judgement dismissing the complaint against them; App. Div. reversed, denied plaintiff's motion, granted motion by defendants Paul Jo Tufano and Creative Encounters LLC, and dismissed the complaint.