



*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 24, 2023 through March 30, 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 BOWERS DEVELOPMENT v ONEIDA COUNTY INDUSTRIAL:

4th Dept. App. Div. order of 12/23/22; annulled determination; leave to appeal granted by the Appellate Division March 3/17/23;

Eminent Domain—Whether the Oneida County Industrial Development Agency (OCIDA) had the authority to use eminent domain to acquire property for a parking lot under General Municipal Law § 858(4); whether the Appellate Division erred in determining that the primary purpose of the acquisition was not a commercial purpose; whether privately owned medical office building and their parking facilities on a hospital campus are “commercial” uses; whether the acquisition of the parking lot was within the scope of the corporate purposes of OCIDA;

App. Div., with one Justice dissenting, in a proceeding pursuant to Eminent Domain Procedure Law § 207 to annul the determination of respondent Oneida County Industrial

Development Agency to condemn certain real property, annulled the determination and granted the petition.

MADIGAN v BERKELEY CAPITAL LLC:

2nd Dept. App. Div. order of 3/13/23; denial; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal—Appealable Paper;

App. Div. denied motions for reargument and for leave to appeal.

CHESWOLD v WYNN:

4th Dept. App. Div. order of 2/27/23; denial; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal—Stay;

App. Div. denied a motion for a stay in an appeal taken from a judgment of Supreme Court, Monroe County, entered November 18, 2022, and for other relief.

MORRISON v NYCHA:

1st Dept. App. Div. order of 10/25/22; affirmance; leave to appeal granted by the Court of Appeals, 3/16/23;

Negligence—Maintenance of Premises—Whether defendant established entitlement to summary judgment; plaintiff slipped and fell on wet or slippery substance on a stairway in a building owned by defendant;

Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

WILLIAMS (BRANDON), PEOPLE v:

2nd Dept. App. Div. order of 4/6/22; affirmance; leave to appeal granted by Wilson, Ch. J., 2/24/23;

Crimes—Right of Confrontation—Whether admission of co-defendant's testimonial statement without limiting instruction violated Confrontation Clause; whether harmless error analysis applied to confrontation clause violation;

Supreme Court, Queens County, convicted defendant of murder in the second degree and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

WYNN v SPERANZA:

4th Dept. App. Div. order of 2/27/23; denial; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal—Stay;

App. Div. denied a motion for a stay in appeals taken from orders of Supreme Court,

Monroe County, dated November 29, 2022 and November 22, 2022, and for other relief.