COURT OF APPEALS NEW FILINGS

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

April 29, 2016 through May 5, 2016

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.

HENRY PHIPPS PLAZA SOUTH ASSOCIATES, MATTER OF v QUIJANO:
1ST Dept. App. Div. order of 3/22/16; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PUBLIC HOUSING - TERMINATION OF TENANCY - APPROPRIATENESS OF PENALTY - WHETHER THE PENALTY OF EVICTION WAS DISPROPORTIONATE TO THE TENANT'S MISCONDUCT; WHETHER THE LANDLORD TOOK REQUIRED PROCEDURAL STEPS PRIOR TO COMMENCING THIS SUMMARY HOLDOVER PROCEEDING;
Civil Court, New York County, awarded possession of the subject apartment to landlord; App. Term affirmed; App. Div. reversed, vacated the judgment of possession, and dismissed the proceeding.

SCHULZ v STATE OF NEW YORK EXECUTIVE, &c., et al.:
3RD Dept. App. Div. order of 4/7/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER THE SUNY TAX-FREE AREAS TO REVITALIZE AND TRANSFORM UPSTATE NEW YORK PROGRAM (THE START-UP NY ACT) (L. 2013, Ch. 8) VIOLATES NEW YORK CONSTITUTION ARTICLE III, §§ 14 AND 17, ARTICLE VII, § 8(1), ARTICLE VIII, § 1, AND ARTICLE IX, § 2, AND ARTICLES 1, 5 AND 14 OF THE FEDERAL CONSTITUTION; WHETHER THE UPSTATE NEW YORK GAMING AND DEVELOPMENT ACT (THE GAMING ACT) (L. 2013, Ch. 174) VIOLATES NEW YORK CONSTITUTION ARTICLES I, § 9 AND III, § 14, AND ARTICLES 1, 5 AND 14 OF THE FEDERAL CONSTITUTION; CHALLENGE TO DISMISSAL OF CAUSES OF ACTION BASED ON CERTAIN AGREEMENTS FOR FAILURE TO JOIN NECESSARY PARTIES;
Supreme Court, Albany County, among other things, declared that the START-UP NY program (L. 2013, ch. 68) does not violate New York Constitution article III, §§ 14 and 17, article VII, § 8(1), article VIII, § 1, and article IX, § 2, and the GAMING ACT (L. 2013, ch. 174) does not violate New York Constitution article III, § 14; and ordered that, with respect to plaintiff's challenges regarding the constitutionality of separate agreements between the State of New York and the Oneida Indian Nation, Seneca Nation of Indians, and the St. Regis Mohawk Tribe (the Agreements), plaintiff serve the County of Madison, the County of Oneida, the Oneida Indian Nation, the Seneca Nation of Indians and the St. Regis Mohawk Tribe with all the pleadings and supporting papers and a copy of the judgment within 30 days after the date of the amended judgment; thereafter, Supreme Court dismissed the remaining causes of action for failure to join necessary parties; App. Div. affirmed.

TAVERAS v 1149 WEBSTER REALTY CORP., et al.:
1ST Dept. App. Div. order of 12/15/15/; reversal with a two-Justice dissent; Rule 500.11 review pending; leave to appeal granted by App. Div., 4/28/16;
NEGLIGENCE - MAINTENANCE OF PREMISES - DEFECTIVE CONDITION ON RAMP LEADING FROM SIDEWALK TO STORE ENTRANCEWAY - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEFENDANTS FAILED TO MEET THEIR INITIAL BURDEN OF ESTABLISHING, PRIMA FACIE, THEIR ENTITLEMENT TO SUMMARY JUDGMENT BASED ON THE ASSERTION THAT PLAINTIFF COULD NOT IDENTIFY THE DEFECT THAT CAUSED HIM TO FALL;
Supreme Court, Bronx County, sua sponte dismissed the complaint as against defendant 1149 Webster Realty Corp. and granted the motion by defendant A & K Convenience Store, Inc. for summary judgment dismissing the complaint against it; App. Div. reversed, vacated the sua sponte dismissal of the complaint as against defendant 1149 Webster Realty Corp., and denied defendant A & K Convenience Store's motion for summary judgment.