COURT OF APPEALS NEW FILINGS

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

April 28, 2017 through May 4, 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.

ALEYNIKOV (SERGEY), PEOPLE v:
1ST Dept. App. Div. order of 1/24/17; reversal; leave to appeal granted by Fahey, J., 4/20/17;
Crimes--Verdict--Sufficiency of Evidence--Whether legally sufficient evidence supports defendant's conviction of unlawful use of secret scientific material, in violation of Penal Law § 165.07, where defendant made a digital copy of his employer's proprietary computer source code by uploading the code to a server and copying it to his own personal computing devices; Supreme Court, New York County, granted defendant's motion for a trial order of dismissal to the extent of setting aside the jury's verdict convicting him of unlawful use of secret scientific material; App. Div. reversed, denied the motion, reinstated the verdict and remanded the matter for sentencing.

CANGRO v SOLOMON, et al.:
1ST Dept. App. Div. order of 12/29/16; dismissal; 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;
Appeal--Appellate Division--Dismissal of appeal;
Supreme Court, New York County, denied plaintiff's motion raising issues "long settled by Justice of [Supreme Court, New York County] arising from plaintiff's 2001 matrimonial action"; App. Div. granted respondents' motion to strike and to dismiss the appeal to the extent of striking the appendix filed on 9/28/16 and dismissing the appeal.

MAKI v BASSETT HEALTHCARE, et al.:
3RD Dept. App. Div. order of 3/30/17; denial of motion; 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;
Motions and Orders--Vacatur of Order--Whether the Appellate Division properly denied the motion to vacate that court's prior order affirming the dismissal of plaintiff's complaint;
Supreme Court, Delaware County, granted defendants' motion for, inter alia, summary judgment dismissing the complaint; App. Div. denied plaintiff's motion to vacate an order of that court entered 7/21/16, and denied defendants' cross motion for sanctions without prejudice to renewal in the event that plaintiff makes a subsequent motion for the same or similar relief as was sought in the motion to vacate.

SCIALDONE v STEPPING STONES ASSOCIATES, L.P., et al.:
2ND Dept. App. Div. orders of 3/15/17; dismissal of appeals and affirmance; 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 to support an appeal as of right;
Landlord and Tenant--Eviction--Apartment complex landlord terminated tenant's use of one of three parking spaces; claimed denial of due process;
Supreme Court, Westchester County, among other things, awarded summary judgment on the 8th cause of action and granted defendants' motion for summary judgment dismissing the 7th, 9th, 10th, 11th and 20th causes of action; App. Div dismissed appeal for lack of aggrievement from so much of the Supreme Court order awarding plaintiff's summary judgment for lack of aggrievement, and otherwise affirmed.

U.S. BANK NATIONAL ASSOCIATION &c. v GREENPOINT MORTGAGE FUNDING, INC.:
1ST Dept. App. Div. order of 12/29/16; affirmance; leave to appeal granted by App. Div., 4/13/17;
Contracts--Breach or Performance of Contract--"Put-back" action involving residential mortgage backed securities--whether a breach notice is required when the underlying contract claim is based on defendant's independent discovery or knowledge of nonconforming mortgages--whether late breach notice can relate back in time to the commencement of the underlying action in order to avoid dismissal; demand requirement contained within accrual clause of loan sale agreement--CPLR 203(f);
Supreme Court, New York County, among other things, granted defendant's motion to dismiss the breach of contract claim to the extent the claim is based upon cure demands made on defendant, and denied the motion to dismiss that claim to the extent it is based upon allegations of defendant's independent discovery of breaches; App. Div. affirmed.