

COURT OF APPEALS NEW FILINGS

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

May 5, 2017 through May 11, 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.

FERRIS v KENDIG, et al.:

4TH Dept. App. Div. order of 3/24/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Dismissal and Nonsuit-- Dismissal of complaint--whether all of plaintiff's causes of action are barred by the existence of another action between the parties, res judicata or the statute of limitations; claimed due process violations; Supreme Court, Monroe County, granted defendants' motion to dismiss the complaint, dismissed the complaint and awarded defendants disbursements and attorneys' fees in the sum of \$3,549; App. Div. affirmed.

GONZALEZ, MATTER OF v ANNUCCI &c.:

3RD Dept. App. Div. order of 3/23/17; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Appeal--Academic and Moot Questions--Where petitioner level one sex offender was released from an approved residential treatment facility, whether mootness exception applied to petitioner's challenge to his placement in the facility and the conditions thereof; prisons and prisoners--whether Department of Corrections and Community Supervision had an affirmative statutory duty to provide substantial assistance to petitioner in finding housing that complied with the Sexual Assault Reform Act and, under the circumstances, whether the assistance provided was insufficient; application of Correction Law § 201(5); Supreme Court, Albany County, dismissed the CPLR article 78 petition; App. Div. modified by partially converting the matter into a declaratory judgment action, and declared that (1) when a person whose prison sentence has expired and who is subject to the mandatory condition set forth in Executive Law § 259-c(14) is placed in a residential treatment facility pursuant to Penal Law § 70.45(3) and Correction Law § 73(10), the Department of Corrections and Community Supervision has an affirmative obligation pursuant to Correction Law § 201(5) to provide substantial assistance to the person in locating appropriate housing and (2) the services provided to petitioner by the Department of Corrections and Community Supervision in locating such appropriate housing during his placement in the residential treatment facility at the Woodbourne Correctional Facility between 9/30/14 and his subsequent release on 2/4/15 were not adequate to satisfy that duty; and as so modified, affirmed.

INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES, DISTRICT COUNCIL NO. 4, &c., et al. v NEW YORK STATE DEPARTMENT OF LABOR, et al.:

4TH Dept. App. Div. order of 2/10/17; reversal; leave to appeal granted by App. Div., 4/28/17;

Labor--Hours and Wages--Whether, under Labor Law § 220(3-e), apprentices who are registered individually under a bona fide apprenticeship may work and be paid as apprentices even if the work they are performing is not work in the same trade or occupation as their apprenticeship program;

Supreme Court, Erie County, declared that the New York State Department of Labor's determination that the work in question is that of the ironworkers and not of the glaziers is not unreasonable or arbitrary or capricious, and granted defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, denied defendants' motion, reinstated the complaint, granted plaintiffs' cross motion for summary judgment, and granted judgment in favor of plaintiffs to the extent of

declaring that (1) Labor Law §§ 220(3)(a), (b) and (3-e) apply to glazier apprentices enrolled in the DC4 Glazier Apprenticeship Program, and (2) glazing contractors may compensate apprentices registered and enrolled in the DC4 Glazier Apprenticeship Program in accordance with the applicable apprentice rates posted by defendant New York State Department of Labor on taxpayer financed projects.

LEBENSOLD v MANCUSO, et al.:

2ND Dept. App. Div. order of 4/5/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Contracts--Breach or Performance of Contract--Agreement for return of \$15,000 investment in a pickup truck--dismissal of counterclaims and award of \$15,000 to plaintiff; claimed due process violations; Supreme Court, Westchester County, after a nonjury trial, dismissed defendants' counterclaims and was in favor of plaintiff and against defendant Mancuso in the total sum of \$15,000; App. Div. affirmed.

PARIETTI et al. v WAL-MART STORES, INC., et al.:

2ND Dept. App. Div. order of 6/22/16; reversal; leave to appeal granted by Court of Appeals, 3/23/17; Rule 500.11 review pending; Negligence--Maintenance of Premises--whether a triable issue of fact exists regarding defendants' notice of the wet surface on which plaintiff slipped, thereby precluding summary judgment; Supreme Court, Suffolk County, denied that branch of defendants' motion for summary judgment dismissing the complaint insofar as asserted against them; App. Div. reversed and granted the motion for summary judgment dismissing the complaint.

PILARZ, MATTER OF v HELFER &c.:

4TH Dept. App. Div. order of 3/24/17; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Constitutional Law--Due Process of Law--Whether section 307-8(D) of the Code of the City of Buffalo, pertaining to the hearing required after a not guilty plea to a parking violation, is facially unconstitutional; alleged due process violation; Supreme Court, Erie County, granted defendant's motion to dismiss the petition; App. Div. modified by granting judgment in favor of defendant to the extent of adjudging and declaring that section 307-8(D) of the Code of the City of Buffalo is not facially unconstitutional and, as so modified, affirmed.

PROMETHEUS REALTY CORP., et al., MATTER OF v NEW YORK CITY WATER BOARD, et al.:

1ST Dept. App. Div. order of 2/16/17; affirmance; sua sponte examination whether the appeal will become moot upon expiration of the 2017 Fiscal Year; leave to appeal granted by App. Div., 4/25/17;

Municipal Corporations--Water and Sewer Rates--Whether respondent Water Board's actions in approving a rate increase and one-time credit for certain ratepayers was ultra vires and without a rational basis;

Supreme Court, New York County, granted the petition to annul and vacate respondent Water Board's resolution approving a 2.1% increase to the water rates for Fiscal Year 2017 and a one-time \$183 credit for a class of ratepayers; App. Div. affirmed.

PEOPLE ex rel. ROLAND v WARDEN, RIKERS ISLAND &c.:

2ND Dept. App. Div. order of 4/12/17; denial of application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Habeas Corpus--Availability of relief; claimed due process violations;

App. Div. granted poor person relief to the extent of waiving the filing fee imposed by CPLR 8022(b), and denied that branch of the application which was for a writ of habeas corpus.

SIEGEL v THE DAKOTA, INC.:

1ST App. Div. order of 11/22/16; affirmance; 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;

Judges--Recusal--Whether the motion court properly denied plaintiff's motions for recusal; whether the Appellate Division properly treated the appeal from the denial of plaintiff's second motion to recuse as an appeal from a order denying reargument; Supreme Court, New York County, denied plaintiff's motion for recusal, and thereafter, denied plaintiff's second motion for recusal; App. Div. affirmed the order entered 12/22/15 and deemed the appeal from the 4/14/16 order an appeal from an order denying reargument and, as so considered, dismissed the appeal.