

COURT OF APPEALS NEW FILINGS

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

May 10 through May 16, 2019

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.

ALSTON (RICKEY), PEOPLE v:

1ST Dept. App. Div. order of 1/22/19; affirmance; leave to appeal granted by Renwick, J., 4/3/19; Rule 500.11 review pending;

Crimes--Arraignment--Whether trial court's failure to follow procedure set forth in CPL 200.60 was harmless error; trial court required defendant to decide, prior to jury selection, whether to admit his prior conviction; Evidence--Whether trial court providently exercised its discretion in admitting a cell phone video recording of a restaurant's surveillance videotape; Sentence--Whether defendant was properly adjudicated a second felony offender based on a Washington D.C. drug conviction; Supreme Court, New York County, convicted defendant of criminal possession of a weapon in the third degree, menacing in the second degree and criminal mischief in the fourth degree, and imposed; App. Div. affirmed.

MATTER OF BAFUMO; WEINHOFER:

3RD Dept. App. Div. order of 4/11/19; affirmance with dissents; sua sponte examination whether the two-Justice dissent at the Appellate Division is on a question of law;

Names--Change of Name--Whether mother raised reasonable objections to birth father's petition to change five-year old child's name;

Supreme Court, Ulster County, granted petitioner's application pursuant to Civil Rights Law article 6, to change the surname of the subject child; App. Div. affirmed.

EMERALD INTERNATIONAL HOLDINGS LTD., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.:

3RD Dept. App. Div. order of 3/21/19; dismissal of CPLR article 78 petition; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Taxation--Sales and Use Taxes--Proceeding challenging adverse determination by Tax Appeals Tribunal; alleged constitutional violations;

App. Div. granted the motion to dismiss the CPLR article 78 petition seeking to challenge a determination of the Tax Appeals Tribunal of the State of New York.

GORDON (TYRONE D.), PEOPLE v:

2ND Dept. App. Div. order of 2/6/19; affirmance; leave to appeal granted by Wilson, J., 4/22/19;

Crimes--Search Warrant---Whether Supreme Court properly granted suppression of physical evidence seized from two vehicles during execution of search warrant that permitted a search of the "entire premises" located at a specific residential address, but did not particularize that a search of the vehicles was permitted;

Supreme Court, Suffolk County, granted that branch of defendant's omnibus motion which was to suppress physical evidence seized from two vehicles; App. Div. affirmed.

LANIOX v CITY OF NEW YORK:

1ST Dept. App. Div. 3/19/19; reversal with dissents; Rule 500.11 review pending;

Negligence--Maintenance of Premises--Whether plaintiff raised an issue of fact as to whether assailant was an intruder, rather than tenant or invitee, in building where plaintiff was attacked;

Supreme Court, Bronx County, denied the motion of defendant New York City Housing Authority for summary judgment dismissing the complaint; App. Div. reversed and granted the motion.

PETTUS v IMPERIAL PARKING SYSTEMS (INDEX NO. 2389-18):

1ST Dept. App. Term order of 4/17/19; sua sponte examination whether an appeal lies from the paper dated April 17, 2019;

Appeal--Matters Appealable;

App. Term declined to sign appellant's application pursuant to CPLR 5704(b).

PETTUS v BOARD OF DIRECTORS (INDEX NO. 2413-18):

1ST Dept. App. Term order of 4/17/19; sua sponte examination whether an appeal lies from the paper dated April 17, 2019;

Appeal--Matters Appealable;

App. Term declined to sign appellant's application pursuant to CPLR 5704(b).