Vol. 38 - No. 20
5/18/18

COURT OF APPEALS NEW FILINGS

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

May 11, 2018 through May 17, 2018

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.

BROWN (DARRYL), PEOPLE v:
1ST Dept. App. Div. order of 2/20/18; reversed with dissents; leave to appeal granted by Kahn, J., 4/26/18;
Crimes--Justification--Whether trial court erred in denying defendant's request to instruct the jury on the defense of justification;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree; App. Div. reversed and remanded for a new trial.

GIBBS v STATE FARM FIRE AND CASUALTY COMPANY:
4TH Dept. App. Div. order of 4/4/18; 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;
Appeal--Appellate Division--Denial of motion to vacate order dismissing appeal; claimed due process violations in action against insurer for damages arising out of water damage to a residence;
App. Div. denied plaintiff's motion insofar as it sought to vacate dismissal of the appeal that was untimely taken from a 10/2/17 Supreme Court, Erie County order, and dismissed plaintiff's motion insofar as it sought poor person relief.

FASOLAS &c.. v BOBCAT OF NEW YORK, INC., et al.:
2ND Dept. App. Div. order of 4/12/17; affirmance and denial of motions; leave to appeal granted by Court of Appeals, 5/3/18;
Products Liability--Strict Liability--Whether an exception to strict products liability as set forth in Scarangella v Thomas Built Buses (93 NY2d 655 [1999]) is applicable where the allegedly defectively designed product was sold without optional safety equipment to a rental company that planned to rent the product to the general public; wrongful death;
Supreme Court, Queens County, denied defendants' motions pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint as to them, and pursuant to CPLR 4404(a) to set aside so much of the jury verdict on the issue of liability finding each of the two defendant Bobcat entities 25% at fault in the happening of the accident and defendant Port Jefferson Rental Center d/b/a Taylor Rental Center 50% at fault in the happening of the accident, and for judgment as a matter of law or, in the alternative, to set aside that portion of the jury verdict on the issue of liability in the interest of justice and for a new trial or, in the alternative, to set aside, as excessive, the jury verdict on the issue of damages awarding plaintiff the principal sum of $1,000,000 for conscious pain and suffering (4/18/13 order); and thereafter, entered a judgment in favor of plaintiff and against defendants upon the jury verdict on the issue of liability and damages, and upon the 4/8/13 order (4/22/13 order); App. Div. affirmed and dismissed the appeal and cross appeal from the order denying the parties' CPLR 4401 and 4404 motions after trial.

MATTER OF DARYLL BOYD JONES, A SUSPENDED ATTORNEY:
2ND Dept. App. Div. order of 3/27/18; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client--Reinstatement--Denial of motion for leave to renew and reargue motion for reinstatement; alleged violation of the Equal Protection and Confrontation Clauses;
App. Div. denied the motion for leave to renew and reargue respondent's fourth motion for reinstatement to the bar.

KUZMICH, et al. v 50 MURRAY STREET ACQUISITION LLC:
1ST Dept. App. Div. order of 1/18/18; reversal; leave to appeal granted by App. Div., 4/24/18;
Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in a building receiving Real Property Tax Law § 421-g tax benefits are subject to rent stabilization--effect of luxury vacancy control provisions of Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-504.2(a);
Supreme Court, New York County, among other things, denied defendant's motion for summary judgment, granted plaintiffs' cross motion for partial summary judgment, declared that plaintiffs' apartments are subject to rent stabilization, and ordered that a special referee be designated to hear and determine the amount of overcharges and the amount of attorneys' fees and costs incurred by plaintiffs in litigating this action; App. Div. reversed, granted defendant's motion for summary judgment to the extent of declaring that plaintiffs' apartments were properly deregulated and are not subject to rent stabilization, denied plaintiffs' cross motion, vacated the orders regarding the special referee, and remanded the matter for further proceedings.

MOORE (JOHN, A/K/A FRANKIE), PEOPLE v:
4th Dept. App. Div. order of 4/27/18; denial of motion; sua sponte examination whether an appeal as of right lies in this criminal proceeding;
Appeal--Appellate Division--Denial of motion for writ of error coram nobis;
App. Div. denied appellant's motion for a writ of error coram nobis vacating the 12/30/99 App. Div. order affirming a 3/5/97 Erie County Court judgment.

159 MP CORP., et al. v REDBRIDGE BEDFORD, LLC:
2ND Dept. App. Div. order of 1/31/18; affirmance; leave to appeal granted by App. Div., 4/26/18;

Landlord and Tenant--Lease--Action for a judgment declaring that two commercial leases are in full force and effect and that plaintiffs are not in violation of their obligations under the leases--Yellowstone injunction to prevent landlord from terminating leases or commencing summary proceeding for eviction (First National Stores v Yellowstone Shopping Ctr., 21 NY2d 630 [1968])--whether written leases negotiated at arm's length by commercial tenants may include a waiver of the right to declarative relief that is enforceable at law, or whether such a waiver is void and unenforceable as a matter of public policy;
Supreme Court, Kings County, denied plaintiffs' motion for a Yellowstone injunction and granted defendant's cross motion for summary judgment dismissing the complaint; App. Div. affirmed.

RAMIREZ, MATTER OF v GRASSO, &c.:
1ST Dept. App. Div. order of 4/24/18; denial of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Proceeding Against Body or Officer--Dismissal of Petition--Whether CPLR article 78 proceeding against Justice of the Supreme Court, Bronx County, was properly dismissed; alleged constitutional violations;
App. Div. denied the application pursuant to CPLR article 78 and dismissed the petition.

SNICKLES v STATE OF NEW YORK (AND FIVE OTHER ACTIONS):
4TH Dept. App. Div. order of 3/23/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
State--Claim Against State--Claims arising from allegations that former New York State Assemblyman, who employed all six claimants in various capacities, engaged in acts of sexual harassment and employment discrimination; whether the court properly dismissed claims for failure to timely file a claim or notice of intention; whether notice of intention covering allegations as to certain claimants was insufficiently specific; alleged equal protection violations;
Court of Claims granted the pre-answer motion to dismiss the claim and denied the cross motion of claimant seeking, inter alia, to file a late claim (Trimper - 6/8/16 order) (Mazurek - 6/13/16 order) (Tardone - 6/3/16 order) (Freling - 7/5/16 order) (Campbell - 7/19/16 order) and granted the pre-answer motion to dismiss the claim and granted that part of the cross motion of claimant seeking permission to file a late notice of claim with respect to certain causes of action (Snickles - 7/19/16 order); App. Div. affirmed.

ULETT (DERRICK), PEOPLE v:
2ND Dept. App. Div. order of 8/30/17; affirmance; leave to appeal granted by Feinman, J., 4/26/18;
Crimes--Disclosure--Failure to Disclose Exculpatory Material--alleged violation of Brady v Maryland (373 US 83)--People's failure to disclose a surveillance video of the lobby of the building outside of which the crime occurred—materiality of evidence--whether defendant demonstrated a reasonable probability that the trial result would have been different had the video been disclosed prior to trial—possibility that video would have led to additional exculpatory or impeaching evidence;
Supreme Court, Kings County, convicted defendant, upon a jury verdict, of murder in the second degree, and imposed sentence, and thereafter, after a hearing, denied defendant's motion to vacate the judgment pursuant to CPL 440.10; App. Div. affirmed the judgment and order.

VEGA (FIDEL), PEOPLE v:
1ST Dept. App. Div. order of 11/14/17; affirmance; leave to appeal granted by Wilson, J., 5/4/18;
Crimes--Justification--Whether trial court's justification charge properly instructed the jury to apply the deadly force standard if it found that defendant used a dangerous instrument; Evidence—whether trial court properly precluded defense counsel from questioning the victim and defendant about the victim's mental health; Verdict—Sufficiency of the Evidence—whether verdict convicting defendant of first-degree burglary was supported by legally sufficient evidence;
Supreme Court, New York County, convicted defendant of two counts of burglary in the first degree, two counts of assault in the second degree, and endangering the welfare of a child, and sentenced defendant to an aggregate term of 8 years; App. Div. affirmed.