COURT OF APPEALS NEW FILINGS

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

May 27, 2016 through June 2, 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.

THE BANK OF NEW YORK MELLON &c. v WMC MORTGAGE, LLC:
1ST Dept. App. Div. order of 12/1/15; affirmance; leave to appeal granted by App. Div., 5/12/16; Rule 500.11 review pending; CONTRACTS - CONSTRUCTION - SECURITIZATION OF RESIDENTIAL MORTGAGES - REPRESENTATION AND WARRANTY IN POOLING AND SERVICING AGREEMENT - WHETHER THE COURTS BELOW ERRED IN HOLDING THAT THE AGREEMENT UNAMBIGUOUSLY PROVIDED THAT DEFENDANT J.P. MORGAN MORTGAGE ACQUISITION CORPORATION (JPMMAC) BREACHED THE AGREEMENT IF THE INFORMATION IN THE MORTGAGE LOAN STATEMENT AND OTHER DOCUMENTS WAS NOT CORRECT AT ANY POINT FROM 10/30/06 TO 12/1/106;

Supreme Court, New York County, denied JPMMAC's motion to dismiss the third, fourth, and seventh causes of action; thereafter Supreme Court denied JPMMAC's motion to reargue in part the November 2013 order; App. Div. affirmed.

ESTATE OF DEL TERZO, et al. v 33 FIFTH AVENUE OWNERS CORP.:
1ST Dept. App. Div. order of 2/11/16; modification with dissents; leave to appeal granted by App. Div., 5/17/16; Rule 500.11 review pending;
CONDOMINIUMS AND COOPERATIVES - PROPRIETARY LEASE - BOARD'S CONSENT TO TRANSFER - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT DEFENDANT RESIDENTIAL COOPERATIVE CORPORATION VIOLATED A PROVISION OF THE PROPRIETARY LEASE STATING THAT "CONSENT SHALL NOT BE UNREASONABLY WITHHELD TO AN ASSIGNMENT OF THE LEASE AND SHARES TO A FINANCIALLY RESPONSIBLE MEMBER OF THE LESSEE'S FAMILY"; STATUTE OF LIMITATIONS - WHETHER DEFENDANT WAIVED A DEFENSE BASED ON THE FOUR-MONTH STATUTE OF LIMITATIONS AND WHETHER A SIX-YEAR STATUTE OF LIMITATIONS APPLIED IN ANY EVENT; WHETHER TRIABLE ISSUES OF FACT PRECLUDED SUMMARY JUDGMENT;
Supreme Court, New York County, granted plaintiffs' motion for summary judgment on the first three causes of action, denied their motion for summary judgment on the fourth cause of action, and denied defendant's motion for summary judgment; Supreme Court thereafter declared that defendant's denial of plaintiffs' application to transfer shares allocated to a cooperative apartment and the proprietary lease appurtenant thereto from plaintiff Estate of Helen Del Terzo, to plaintiffs Michael Del Terzo and Julius Del Terzo, constituted a breach of the lease, directed defendant to consent to the transfer, and awarded costs; App. Div. modified to the extent of granting plaintiffs summary judgment on the fourth cause of action for attorneys' fees, and remanding the matter for a hearing with respect thereto, and otherwise affirmed, without costs.

McFADDEN v STATE OF NEW YORK:
3RD Dept. App. Div. order of 4/7/16; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
STATE - CLAIM AGAINST STATE - CLAIM BY PRISONER THAT CORRECTION OFFICERS USED EXCESSIVE FORCE AND ASSAULTED HIM, AND THAT HE WAS THEREAFTER PROVIDED WITH INADEQUATE MEDICAL CARE; SUMMARY JUDGMENT - MOTION FOR PARTIAL SUMMARY JUDGMENT DENIED;
Court of Claims denied claimant's motion for partial summary judgment; App. Div. affirmed.