

COURT OF APPEALS NEW FILINGS

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

June 14 through June 20, 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.

MATTER OF ANONYMOUS:

4TH Dept. App. Div. order of 5/21/19; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Attorney and Client--Disciplinary Proceedings--Appellate Division order denying motion to vacate disbarment order;

App. Div. denied appellant's motion for an order annulling, vacating and setting aside a January 18, 1973 disbarment order.

MATTER OF PUAH B., et al., &c.:

1ST Dept. App. Div. order of 6/6/19; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Parent, Child and Family--Abused or Neglected Child--Whether a preponderance of the evidence supports Family Court's finding of educational neglect as to mother's two older children and derivative neglect as to the younger children;** Family Court, Bronx County, determined that respondent mother neglected the subject children; App. Div. modified by vacating the finding that the mother neglected the children by failing to provide them with adequate food, clothing and shelter, and remanded the matter for a new dispositional hearing, and otherwise affirmed.

CHEN v INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA:

1ST Dept. App. Div. order of 10/30/18; affirmance; leave to appeal granted by Court of Appeals, 6/11/19;
Contracts--Waiver--Whether excess insurer defendant waived argument relating to its obligation to cover interest on personal injury judgment; Motions--Reargument or Renewal--Whether Supreme Court properly granted reargument to consider interest issue; Insurance--Construction of Policy--Whether Supreme Court properly interpreted excess insurance policy; Supreme Court, New York County, adjudged defendant liable to plaintiff for \$1,526,938 with costs and interest from May 2, 2016, the date of the order granting partial summary judgment to plaintiff, for \$159,638.23, for a total award of \$1,686, 576.23; App. Div. affirmed.

DEUTSCHE BANK NATIONAL TRUST COMPANY, &c. v MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, &c., et al.:

1ST Dept. App. Div. order of 1/17/19; reversal; leave to appeal granted by App. Div., 6/4/19;
Contracts--Contractual Limitation of Liability--Whether plaintiff sufficiently pleaded gross negligence to render "sole remedy" clauses in parties' residential mortgage-backed security agreements unenforceable, thereby permitting a claim for compensatory damages; whether plaintiff's allegations of wrongdoing against it were sufficient to support a demand for punitive damages; Supreme Court, New York County, granted defendants' motion to dismiss the cause of action for breach of representations and warranties to the extent it seeks compensatory damages inconsistent with the sole remedy clauses of the parties' agreements, punitive damages, and attorneys' fees; App. Div. reversed and denied the motion.

FREEDOM MORTGAGE CORPORATION v ENGEL, et al.:

2ND Dept. App. Div. order of 7/11/18, reversal; leave to appeal granted by Court of Appeals, 6/6/19;

Mortgages--Foreclosure--Whether mortgagee's voluntary discontinuance of prior foreclosure action constituted an affirmative act of revocation of its prior election to accelerate the mortgage debt; prior foreclosure action discontinued by so-ordered stipulation, which was silent on issue of revocation of election to accelerate;

Supreme Court, Orange County, denied defendant Herschel Engel's motion for summary judgment dismissing the complaint insofar as asserted against him and granted those branches of the plaintiff's cross motion which were for summary judgment on the complaint insofar as asserted against that defendant, to strike his answer and affirmative defenses, and to appoint a referee; App. Div. reversed, granted the motion of the defendant Engel for summary judgment dismissing the complaint insofar as asserted against him, and denied those branches of the plaintiff's cross motion which were for summary judgment on the complaint insofar as asserted against the defendant Engel, to strike his answer and affirmative defenses, and to appoint a referee.

HINSHAW (ROBERT), PEOPLE v:

4TH Dept. App. Div. order of 3/22/19; affirmance; leave to appeal granted by Whalen, J., 6/4/19;

Crimes--Unlawful Search and Seizure--Whether the police had reasonable suspicion to stop defendant's vehicle; officer checked Department of Motor Vehicles (DMV) computer records for the vehicle's license plate number, which revealed that he car had been impounded and therefore should have been located on an impound lot; DMV report stated that it "should not be treated as a stolen vehicle hit" and "[n]o further action should be taken based solely upon this impounded response."

County Court, Erie County, convicted defendant of criminal possession of a weapon in the second degree and unlawful possession of marihuana; App. Div. affirmed.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION v CALIGURI, &c.:

2ND Dept. App. Div. order of 1/16/19; affirmance; leave to appeal granted by Court of Appeals, 6/11/19;

Mortgages--Foreclosures-Whether plaintiff mortgagee established standing in foreclosure action; plaintiff attached to summons and complaint a copy of consolidated note, which bore an endorsement in blank from original lender; defendant demanded inspection of original note; Whether second foreclosure action was barred by res judicata; Whether Supreme Court erred in not transferring foreclosure action to Justice who dismissed plaintiff's earlier foreclosure action;

Supreme Court, Suffolk County, denied defendant's motion to transfer the action pursuant to 22 NYCRR 202.3(a) to the Justice who heard a prior foreclosure action involving the subject property, granted those branches of the plaintiff's motion which were for summary judgment on the complaint and for an order of reference, and denied defendant's cross motion for summary judgment dismissing the complaint or to compel certain discovery; App. Div. affirmed.

LeCLAIR, MATTER OF v WAIT &c.:

3RD Dept. App. Div. order of 6/7/19; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**Proceeding Against Body or Officer--When Remedy Available--Article 78
proceeding against Family Court Judge; alleged constitutional violations;**

App. Div. inter alia, granted respondent's motion to dismiss the CPLR article 78 petition.

PETTUS v BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (INDEX
NO. 0260040/2018):

Supreme Court, Bronx County, order of 3/7/19; denied motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeals--Papers appealable;

Supreme Court denied a motion by appellant that sought to have the court "make a decision on Index No. 260040" on the ground that no undecided motions in the matter were pending.

MUHAMMAD (ZHAKARIYYA), PEOPLE v:

1ST Dept. App. Div. order of 6/24/16; affirmance; leave to appeal granted by Renwick, J., 6/4/19; Rule 500.11 review pending;

Jury--Deliberations--Whether trial court's responses to notes sent by the jury were coercive; trial court repeated Allen charge it had given preceding day without providing additional guidance requested by jury and granted jury's request for more time to deliberate without addressing scheduling conflicts raised in jury note;

Supreme Court, New York County, convicted defendant of sexual abuse in the first degree and endangering the welfare of a child; App. Div. affirmed.

REICH, et al. v BELNORD PARTNERS, LLC, et al.:

1ST Dept. App. Div. order of 1/15/19; affirmance; leave to appeal granted by App. Div., 5/16/19;

Landlord and Tenant--Rent Regulation--Whether Supreme Court properly dismissed as time-barred plaintiffs' claim for rent overcharges based on defendants' failure to charge rent stabilized rents while receiving J-51 tax benefits;

Supreme Court, New York County, granted defendants' motion to dismiss the claim for rent overcharges and denied plaintiffs' cross motion for summary judgment pursuant to CPLR 3211(c); App. Div. affirmed.

WHITE v ANNUCCI (APP. DIV. NO. 526955):

3RD Dept. App. Div. order of 4/25/19; denial of motion; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Appeal--Appealable Paper--Order denying motion for reargument or renewal;

App. Div. denied appellant's motion for reargument or, in the alternative, to renew and/or for further relief.