

COURT OF APPEALS NEW FILINGS

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

June 16, 2017 through June 22, 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.

BETHUNE v MTA/LONG ISLAND BUS, et al.:

2ND Dept. App. Div. order of 5/10/17; dismissal of appeal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other basis exists for an appeal as of right; Appeal--Appellate Division--Dismissal of appeal as untimely taken; App. Div. granted respondents' motion to dismiss the appeal as untimely taken, and dismissed the appeal.

MATTER OF NEW YORK CITY ASBESTOS LITIGATION (BROWN v BELL & GOSSETT COMPANY):

1ST Dept. App. Div. order of 1/10/17; reversal; leave to appeal granted by App. Div., 5/30/17;

Labor--Safe Place to Work--Exposure to Toxic Substances--Whether the evidence at trial established that defendant had the authority to control the activity that caused plaintiff's injury, namely, the application of asbestos-containing materials; Labor Law § 200;

Supreme Court, New York County, granted defendant Consolidated Edison's posttrial motion to set aside the verdict against it and direct that judgment be entered in its favor dismissing the complaint against it; and thereafter, upon renewal and reargument, adhered to the 8/29/14 determination; App. Div. reversed, denied the posttrial motion, reinstated the verdict as against Consolidated Edison, and granted a new trial on damages for loss of consortium unless plaintiff stipulates, within 30 days after service of a copy of the order with notice of entry, to reduce the loss of consortium verdict to \$360,000 and to entry of a judgment in accordance therewith.

ODUM (DONALD), PEOPLE v:

App. Term, 1ST Dept order of 12/23/16; affirmance; leave to appeal granted Fahey, J., 6/13/17;

Motor Vehicles--Chemical Tests--Where request to administer chemical breath test occurred more than two hours after defendant's arrest, whether defendant's refusal to submit to that test can be used against defendant in court; whether defendant's consent to the chemical breath test was involuntary;

Criminal Court of the City of New York, Bronx County, granted defendant's motion to suppress evidence of his initial refusal to take a breathalyzer test and the subsequent breathalyzer results; and thereafter, upon reargument, adhered to the 6/30/15 order; App. Term affirmed.

ALAN S. PEARCE AND JOEL A LEVIN, AS SUCCESSOR TRUSTEES UNDER THE GOLDSTEIN TRUST v LIPETZ:

1ST Dept. App. Div. order of 5/23/17; modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the two-Justice dissent at the Appellate Division is on a question of law;

Landlord and Tenant--Rent Regulation--Whether a rent stabilized tenant who repeatedly rents out a room in her apartment at market rates through the Airbnb website may be subject to lease termination pursuant to the Rent Stabilization Code (9 NYCRR 2525.6 [b] and [f])--room occupants as subtenants versus roommates or guests--excessive profit over regulated rent plus ten percent sublet allowance; possible landlord knowledge of/acquiescence to Airbnb arrangement through building manager--agency; eviction without opportunity to cure; summary judgment;

Supreme Court, New York County, denied plaintiff's motion for summary judgment on its first, second and third causes of action and for dismissal of defendant's affirmative defenses and counterclaim, and denied defendant's cross motion for summary judgment dismissing the complaint; App. Div. modified, to grant plaintiff's motion, and to declare that plaintiff validly terminated the lease, and otherwise affirmed.

LISA T., MATTER OF v KING E. T.:

1ST Dept. App. Div. order of 2/28/17; affirmance; leave to appeal granted by App. Div., 5/18/17;
Parent, Child and Family--Order of Protection--Whether Family Court erred in imposing an order of protection upon a finding that respondent willfully violated two temporary orders of protection--sufficiency of proof of violation of temporary orders of protection--Family Court Act § 846-a;
Family Court, Bronx County, among other things, found that respondent willfully violated two temporary orders of protection; and thereafter, issued a one-year order of protection against respondent; App. Div. affirmed.

U.S. BANK NATIONAL ASSOCIATION &c. v DLJ MORTGAGE CAPITAL, INC. (A.D. DOCKET NO. 1678):

1ST Dept. App. Div. order of 7/7/16; affirmance; leave to appeal granted by Court of Appeals, 6/6/17;
Limitation of Actions--Commencement of action after termination of prior action--where complaint was dismissed because plaintiff failed to satisfy a condition precedent and plaintiff lacked standing to sue, whether CPLR 205(a) applies to allow trustee, which was substituted as plaintiff, to commence a new action; whether trustee may rely on relation-back doctrine of CPLR 203(f);
Supreme Court, New York County, dismissed the complaint with prejudice; App. Div. affirmed.

U.S. BANK NATIONAL ASSOCIATION &c. v DLJ MORTGAGE CAPITAL, INC. (A.D. DOCKET NO. 1679):

1ST Dept. App. Div. order of 7/7/16; affirmance; leave to appeal granted by Court of Appeals, 6/6/17;
Contracts--Conditions Precedent--Where plaintiff trustee failed to comply with a contractual condition precedent to bringing suit, whether the timely claims were properly dismissed without prejudice to refileing pursuant to CPLR 205(a); limitation of actions--commencement of action after termination of prior action;
Supreme Court, New York County, dismissed the complaint without prejudice on the ground that plaintiff did not fulfill a contractual condition precedent to suit; App. Div. affirmed.

WAITE, et al. MATTER OF v TOWN OF CHAMPION:

4TH Dept. App. Div. order of 3/24/17; affirmance; leave to appeal granted by Court of Appeals, 6/8/17;

Municipal Corporations--Fire Districts--Dissolution--Whether respondent Town's dissolution plan for a fire protection district complied with General Municipal Law, article 17-A;

Supreme Court, Jefferson County, dismissed the CPLR article 78 petition; App. Div. affirmed.