State of New York
Court of Appeals

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Chief Clerk and
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Clerk's Office
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COURT OF APPEALS NEW FILINGS

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

June 30, 2023 through July 6, 2023

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.

D&G CONSTRUCTION v SCOHN ENTERPRISES:
2nd Dept. App. Div. order of 5/17/23; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for the appeal;
Dismissal and Nonsuit—Dismissal of complaint; alleged constitutional violations; Supreme Court, Nassau County, granted those branches of the separate motions of the defendants Scohn Enterprises, Inc., Little Dae Enterprise, Inc., Scott Brody, and Brody, O'Connor & O'Connor, the defendants Steve Cohn Esq., P.C., and Steve Cohn, and the defendants Joseph Covello and Lynn, Gartner, Dunne and Covello, LLP, which were pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against each of them and directed a hearing on the issue of attorneys' fees and costs; App. Div. (1) dismissed the appeal from so much of the order as directed a hearing on the issue of attorneys' fees and costs; and (2) otherwise modified by deleting the provisions thereof

granting those branches of the separate motions of the defendants Scohn Enterprises, Inc., Little Dae Enterprise, Inc., Scott Brody, and Brody, O'Connor & O'Connor and the defendants Steve Cohn Esq., P.C., and Steve Cohn which were pursuant to CPLR 3211(a) to dismiss so much of the seventh cause of action as sought an award of attorneys' fees incurred in the prosecution of this action and so much of the eighth cause of action as alleged conversion of tangible personal property and specific money insofar as asserted against each of them, and substituting therefor provisions denying those branches of the separate motions; and, as so modified, affirmed the order insofar as reviewed.

FEDERMAN v TOWN OF LORRAINE:
4th Dept. App. Div. order of 2/3/23; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;
Judgments—Summary Judgment—Whether plaintiff established entitlement to summary judgment on eminent domain cause of action;
Supreme Court, Jefferson County, granted defendants' motion for summary judgment, denied plaintiff's cross motion for summary judgment, and dismissed the complaint; App. Div. modified by denying the motion and reinstating the third cause of action in the amended complaint and, as so modified, affirmed.

MATTER OF GRUEN v GRUEN:
2nd Dept. App. Div. order of 5/15/23; dismissal; sua sponte examination of 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;
Motions and Orders—Denial of motion to vacate;
Family Court, Kings County, directed petitioner to undergo a mental health evaluation; App. Div. inter alia, dismissed the appeal from the September 7, 2022 Family Court order; App. Div. denied the motion to vacate an order of the court dated December 2, 2022, which dismissed an appeal from an order of Family Court, Queens Co., dated September 7, 2022.

PEOPLE v HAYWARD (CODIE):
3rd Dept. App. Div. order of 2/2/23; affirmance; leave to appeal granted by J. Lynch, 6/15/23;
Crimes—Preservation of Issue for Review—Whether defendant failed to preserve legal sufficiency claim; whether defendant failed to preserve claim that evidence should have been suppressed because search warrant did not contain no-knock provision and police entered residence without announcing their presence; Crimes—Proof of Other Crimes—Whether County Court improperly allowed confidential informant to testify about drug sale that preceded execution of search warrant and defendant's arrest; Crimes—Right to Counsel—Whether defendant's counsel was ineffective for failing to challenge execution of search warrant;
County Court, Fulton County, convicted defendant of the crimes of criminal possession of

a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree; App. Div. affirmed.

MATTER OF NYCLU v CITY OF ROCHESTER:
4th Dept. App. Div. order of 11/10/22; modification; leave to appeal granted by the Court of Appeals, 6/13/23;
Records—Freedom of Information Law—Whether law enforcement records subject to public release under the Public Officers Law include complaints or internal investigations that are unsubstantiated; whether the release of such information constitutes an invasion of privacy;
Supreme Court, Monroe County, in a proceeding pursuant to CPLR article 78, denied the petition in part; App. Div. modified by granting those parts of the petition seeking disclosure of law enforcement disciplinary records dated on or before January 12, 2020 and seeking disclosure of law enforcement disciplinary records containing unsubstantiated claims or complaints, subject to redaction, and, as so modified, affirmed.

ORELLANA v TOWN OF CARMEL:
2nd Dept. App. Div order of 1/25/23; affirmance; leave to appeal granted by the Court of Appeals, 6/15/23;
Motor Vehicles—Collision—Whether defendant superintendent of highways for defendant town highway department was "actually engaged in work on a highway" at the time of the accident as contemplated by Vehicle and Traffic Law § 1103; whether defendant superintendent acted with reckless disregard for plaintiff's safety;
Supreme Court, Putnam County, granted defendants' motion for summary judgment dismissing the complaint, and denied, as academic, plaintiff's cross motion, among other things, for summary judgment on the issue of liability; App. Div. affirmed.

SABINE v STATE OF NEW YORK:
4th Dept. App. Div. order of 3/17/23; affirmance; leave to appeal granted by the Court of Appeals, 6/9/23; Rule 500.11 review pending;
Appeal—Preservation of Issue for Review—Whether exception to preservation requirement applies to reach claimant's prejudgment interest claim; State—Claim Against State—Whether prejudgment interest award ran from date of decision establishing serious injury and damages rather than date on which common law liability was found;
Court of Claims awarded claimant money damages of $550,000 plus interest; App. Div. affirmed.

PEOPLE v SPIRITO (DOMINIC):

3rd Dept. App. Div. order of 5/4/23; affirmance; leave to appeal granted by Aarons, J., 6/8/24;

Crimes—Unlawful Search and Seizure—Whether warrantless search of defendant's residence by parole officer, based on tip from defendant's mother that she believed he had a gun, was unreasonable and in violation of the Fourth Amendment;

County Court, Tioga County, convicted defendant upon his plea of guilty of the crime of criminal possession of a weapon in the third degree (two counts); App. Div. with one Justice dissenting, affirmed.