Vol. 39 - No. 27
7/12/19

COURT OF APPEALS NEW FILINGS

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

July 5 through July 11, 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.

CANGRO v PARK SOUTH TOWERS ASSOCIATES et al.:
1ST Dept. App. Div. order of 4/23/19; dismissal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;
Dismissal and Nonsuit–Dismissal of complaint where litigation injunction existed and plaintiff did not obtain leave of court; Contempt--Civil Contempt;
App. Div., inter alia, (1) granted that branch of defendant's motion seeking dismissal of the complaint; (2) denied that branch of the motion seeking to hold plaintiff in civil contempt and to direct that she be incarcerated until she purges her contempt; (3) imposed a sanction in the amount of $2,000 against plaintiff pursuant to 22 NYCRR 130-1.1, and (4) remitted the matter to Supreme Court, New York County for determination of the appropriate costs and attorneys fees to be imposed on plaintiff.

COZZI, MATTER OF v AMERICAN STOCK EXCHANGE et al.; WORKERS' COMPENSATION BOARD:
3RD Dept. App. Div. order of 5/16/19; affirmance; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether an appeal as of right from the unanimous Appellate Division order absent the direct involvement of a substantial constitutional question;
Workers' Compensation --Whether the Workers' Compensation Board abused its discretion in determining that it was without jurisdiction to reopen the claim; alleged constitutional violations;
Workers' Compensation Board denied claimant's application to reopen his workers' compensation claim; App. Div. affirmed.

ELLIS (ROBERT), PEOPLE v:
2ND Dept. App. Div. order of 11/28/18; affirmance with one Justice dissenting; leave to appeal granted by Barros, J., 6/11/19; Rule 500.11 review pending;
Crimes--Jurors--Challenge to Juror for Cause--Whether the trial court abused its discretion as a matter of law when it denied defendant's for-cause challenge to a prospective juror who was a retired school security officer and whose son, a police officer, had been excused for cause due to his relationships with witnesses; Crimes--Fair Trial--Jurors Saw Defendant's Prison Garb--Whether defendant was deprived of a fair trial when he appeared before the jury in prison-issued clothing;
Supreme Court, Queens County, convicted defendant of second degree attempted murder, two counts of first degree assault; two counts of first degree murder; two counts of second degree criminal possession of a weapon; and fifth degree of criminal possession of stolen property; App. Div. affirmed.

EMIGRANT FUNDING CORPORATION v NUNEZ, &c., et al.:
2ND Dept. App. Div. order of 1/15/19; dismissal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal taken as of right;
Appeal--Dismissal--Appellate Division order dismissing appeal;
App. Div., inter alia, granted the branch of respondent's motion to dismiss the appeal from an order of Supreme Court, Queens County, as untimely taken, dismissed the appeal, and denied that branch of appellant's motion to stay the foreclosure sale of the subject premises and all proceedings in the foreclosure action.

GOLDMAN (REGINALD), PEOPLE v:
1ST Dept. App. Div. order of 4/23/19; reversal; leave to appeal granted by Fahey, J., 6/18/19;
Crimes--Search Warrant--DNA Evidence--Whether DNA evidence obtained as a result of an ex parte search warrant application made when defendant was incarcerated on a separate matter was properly admitted into evidence at trial; Whether a YouTube video was properly authenticated;
Supreme Court, Bronx County, convicted defendant of first degree manslaughter; App. Div. reversed, granted defendant's motion to suppress DNA evidence, and remanded for a new trial.