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COURT OF APPEALS NEW FILINGS

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

July 19 through July 25, 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 HENNESSY (HEARST CORPORATION, &c. -- COMMISSIONER OF LABOR):
3RD Dept. App. Div. order of 5/30/19; affirmance; 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;
Unemployment Insurance--Employee or Independent Contractor--Whether substantial evidence supports determination that claimant newspaper carrier and other similarly situated carriers are employees, not independent contractors, of newspaper publisher; alleged due process violations;

Unemployment Insurance Appeal Board ruled, among other things, that appellant was liable for additional unemployment insurance contributions on remuneration paid to claimant and others similarly situated; App. Div. affirmed.

PEOPLE ex rel. JOHNSON v SUPERINTENDENT, ADIRONDACK CORRECTIONAL FACILITY, et al.:
3RD Dept. App. Div. order of 7/3/19; affirmance with two-Justices concurring; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Crimes--Sex Offender--Whether the mandatory condition on parole release imposed under Executive Law § 259-c (14) is violative of substantive due process under the Federal or State Constitution;
Supreme Court, Essex County, denied petitioner's application for writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing; App. Div. affirmed.

PRICE v CITY OF NEW YORK, et al.:
1ST Dept. App. Div. order of 5/30/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Municipal Corporations–Tort Liability–Police–Whether plaintiff's negligence claims were properly dismissed on the ground that defendants were protected by immunity for tort liability because the decision to pursue plaintiff was discretionary; Pleading--Sufficiency of Pleading--Whether plaintiff's claims alleging police misconduct, including violations of plaintiff's rights under the Fourth and Fourteenth Amendments of the federal Constitution, were properly dismissed; Municipal Corporations--Tort Liability--Whether Supreme Court properly concluded that plaintiff's claim of intentional infliction of emotional distress was not available against the City;
Supreme Court, New York County, granted defendant's motion to dismiss the complaint; App. Div. affirmed.

US BANK NATIONAL ASSOCIATION, &c. v NELSON, et al.:
2ND Dept. App. Div. order of 1/23/19; affirmance with one-Justice dissent; leave to appeal granted by App. Div., 7/2/19;
Parties--Standing--Whether, in a mortgage foreclosure action in which the complaint alleges that the plaintiff is the owner and holder of the note and mortgage, the denial of that allegation in the answer is alone sufficient to assert that the plaintiff lacks standing, thereby placing the question of standing in issue;

Supreme Court, Kings County, granted plaintiff's motion for a judgment of foreclosure and sale and denied their cross motion pursuant to CPLR 3211(a) and RPAPL 1303 to dismiss the complaint insofar as asserted against them; App. Div. affirmed.

COUNTY OF WAYNE, MATTER OF (SCHENK):
4TH Dept. App. Div. order of 2/8/19; reversal; 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;
Taxation--Tax Liens--Tax Sales and Tax Titles--Whether motion to vacate default judgment of foreclosure was untimely; whether Supreme Court properly granted request for an extension of time to make motion to vacate default judgment of foreclosure; alleged due process violation;
Supreme Court, Wayne County, conditionally granted respondents' motion to vacate a default judgment of foreclosure; App. Div. reversed and denied the motion.