



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

July 14, 2023 through July 20, 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.

MERCHANTS CACHET INVESTORS v ROCHE:

1st Dept. App. Div. order of 6/27/23; affirmed; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Suretyship and Guarantee—Whether the Appellate Division properly held that the purported false promise by plaintiff's representative was a mere promissory statement that standing alone did not support defendant's fraudulent inducement defense; whether the Appellate Division properly rejected defendant's contention that the CFO of Cachet had the authorization to execute an amendment to an agreement;

Supreme Court, New York County, granted plaintiff's motion for summary judgment on the complaint seeking to enforce a guaranty and denied defendant's cross-motion for summary judgment dismissing the complaint; Supreme Court, New York County, entered judgment in favor of plaintiff in the amount of \$4,507,899.38; App. Div. affirmed

judgment and dismissed appeal from 12/15/21 order as subsumed in appeal from judgment.

MTGLO INVESTORS v SINGH:

2nd Dept. App. Div. order of 5/24/23; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Limitation of Actions—Six-Year Statute of Limitations—Whether the Appellate Division properly held that, under the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821), plaintiff was estopped from asserting that the debt was not validly accelerated by the commencement of the 2011 action based on lack of standing; whether the retroactive application of FAPA was unconstitutional; whether the Appellate Division should have permitted supplemental briefing or argument because FAPA was enacted after the appeal had been fully briefed and argued;** Supreme Court, Nassau County, insofar as appealed from, granted those branches of plaintiff's motion which were for summary judgment on the complaint insofar as asserted against defendant Harmel Singh, to strike his answer, and for an order of reference, denied that defendant's cross-motion for summary judgment dismissing the complaint insofar as asserted against him on the ground that the action was time-barred and on his counterclaim pursuant to RPAPL 1501 (4) to cancel and discharge of record the mortgage, and referred the matter to a referee to ascertain and compute the amount due on the mortgage loan; App. Div. reversed, denied those branches of plaintiff's motion which were for summary judgment on the complaint insofar as asserted against defendant Harmel Singh, to strike his answer, and for an order of reference, and granted that defendant's cross-motion for summary judgment dismissing the complaint insofar as asserted against him on the ground that the action was time-barred and on his counterclaim pursuant to RPAPL 1501 (4) to cancel and discharge of record the mortgage.

MATTER OF SCHULZ v STATE OF NEW YORK:

3rd Dept. App. Div. order of 5/11/23; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support the appeals as of right; **Constitutional Law—Gift of Public Funds—Whether appropriation of \$600 million in state funds to Urban Development Corporation in 2022-2023 state budget bill for capital projects for the development of a professional football stadium constituted an appropriation of public funds in aid of a private undertaking in violation of NY Constitution, article VII, § 8 (1); whether part YY of the budget bill, which allowed Erie County to issue bonds for the development of new stadium, violated NY Constitution, article VIII, § 1;** Supreme Court, Albany County, among other things, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, granted respondents' motion to dismiss the petition/complaint; Supreme Court, Albany County, denied petitioners' motion to accept a surreply; App. Div. (1) modified the judgment by reversing so much thereof as dismissed the petition/complaint; declared that the appropriations in the 2022-2023

budget bill to the Urban Development Corporation do not violate NY Constitution, article VII, § 8 (1) and that part YY of the budget bill does not violate NY Constitution, article VIII, § 1; and, as so modified, affirmed the judgment; and (2) affirmed the order.

PEOPLE v MARK WATKINS:

1st Dept. App. Div. order of 6/9/22; affirmance; leave to appeal granted by Troutman, J., 6/22/23;

Crimes—Right to Counsel—Effective Representation—Whether the Appellate Division properly held that defendant’s ineffective assistance claim was unreviewable on direct appeal; whether defense counsel was ineffective for refraining from requesting a jury charge on crossracial identification;

Supreme Court, New York County, convicted defendant, after a jury trial, of attempted assault in the first degree, assault in the second degree, and criminal possession of a weapon in the third degree, and sentenced him, as a second violent felony offender, to an aggregate term of 13 years; App. Div. affirmed.