COURT OF APPEALS NEW FILINGS

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

July 22, 2016 through July 28, 2016

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.

ADVANCED THERAPY, &c., MATTER OF v NEW YORK STATE DEPARTMENT OF EDUCATION:
3RD Dept. App. Div. order of 6/9/16; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
SCHOOLS - EDUCATION OF CHILDREN WITH DISABILITIES - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT EDUCATION DEPARTMENT'S DETERMINATION FINDING NO REGIONAL NEED FOR PETITIONER'S PRESCHOOL EDUCATION PROGRAM WAS BASED UPON A RATIONAL INTERPRETATION OF EDUCATION DEPARTMENT REGULATIONS (9 NYCRR 200.7[a][2]; 200.20[a]); WHETHER EDUCATIONAL LAW § 4410 IS UNCONSTITUTIONALLY VAGUE, OR THE CHALLENGED DETERMINATION VIOLATED GENERAL BUSINESS LAW § 308 OR PETITIONER'S RIGHT OF FREEDOM TO CONTRACT;

Supreme Court, Albany County, granted petitioner's application, in a proceeding pursuant to CPLR article 78, to annul a determination of respondent finding there was no regional need for petitioner's preschool special education program; App. Div. reversed, confirmed the determination and dismissed the petition.

ARJUNE (MARIO), PEOPLE v:
2ND Dept. App. Div. order of 4/13/16; denial of writ of error coram nobis; leave to appeal granted by Fahey, J., 7/13/16;
CRIMES - APPEAL - DENIAL OF APPLICATION FOR A WRIT OF ERROR CORAM NOBIS SEEKING TO REINSTATE AN APPEAL ON THE GROUND OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, WHERE THE NOTICE OF APPEAL WAS TIMELY FILED BUT THE APPEAL WAS DISMISSED FOR FAILURE TO TIMELY PERFECT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT DEFENDANT "HAS NOT ESTABLISHED HIS ENTITLEMENT TO THE RELIEF REQUESTED (see PEOPLE v SYVILLE,(15 NY3d 391)";
App. Div. denied defendant's application for a writ of error coram nobis on appeal from a Supreme Court, Queens County, judgment of conviction, rendered 11/12/09, to reinstate an appeal on the ground of ineffective assistance of trial counsel, where the notice of appeal was timely filed but the appeal was dismissed by decision and order on motion of the Appellate Division dated 12/9/13, for failure to timely perfect.

BONIE (NASEAN), PEOPLE v:
1ST Dept. App. Div. order of 7/5/16; modification; sua sponte examination whether the conclusion of the criminal trial renders the appeal moot, whether a civil appeal lies from the Appellate Division order appealed from and whether a substantial constitutional question is directly involved to support the appeal taken as of right;
SHIELD LAW - ARTICLE I, SECTION 8 OF THE NEW YORK CONSTITUTION - QUALIFIED PRIVILEGE FOR UNPUBLISHED NONCONFIDENTIAL NEWS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE PEOPLE MADE THE "CLEAR AND SPECIFIC SHOWING" REQUIRED TO OVERCOME NEWS ORGANIZATION'S QUALIFIED PRIVILEGE AS TO CERTAIN PORTIONS OF UNAIRED VIDEO FOOTAGE OF AN INTERVIEW WITH DEFENDANT;
Supreme Court, Bronx County, granted the People's motion to compel nonparty Dina Sforza, a representative of News 12 The Bronx, L.L.C., to comply with a subpoena, to the extent of directing an in camera review of unpublished video footage of the News 12 reporter's interview of defendant, and denied News 12's cross motion to, inter alia, quash the subpoena; App. Div. modified to the extent of directing the trial judge to disclose to the People after in camera review only those portions of the video footage in which defendant makes any statement concerning killing the victim, or discusses their relationship and his impressions and observations of her, including her conduct as a tenant, and otherwise affirmed.

BRUCKNER REALTY, LLC, MATTER OF v CRUZ:
1ST Dept. App. Div. order of 5/3/16; affirmance; leave to appeal granted by App. Div., 7/14/16; Rule 500.11 review pending;
LANDLORD AND TENANT - RENT REGULATION - WHETHER LANDLORD ESTABLISHED AS A MATTER OF LAW THAT THE GARAGE SPACE WAS NOT A REQUIRED ANCILLARY SERVICE UNDER RENT STABILIZATION;
Civil Court, Bronx County, granted petitioner landlord's motion to dismiss respondent tenant's defenses and for summary judgment of possession of a garage space in a holdover summary proceeding; App. Term modified to deny the parts of petitioner's summary judgment motion that sought to dismiss respondent's second and third "affirmative defenses" and first and second "defenses" and for summary judgment of possession; App. Div. affirmed.

DAVIS v SCOTTISH RE GROUP LIMITED, et al.:
1ST Dept. App. Div. order of 3/10/16; modification with a two-Justice dissent; leave to appeal granted by App. Div., 7/7/16;
CORPORATIONS - MERGER - ACTION BY MINORITY SHAREHOLDER ASSERTING BOTH DIRECT AND DERIVATIVE CAUSES OF ACTION ARISING OUT OF ALLEGEDLY UNDERVALUED CASH-OUT MERGER THAT UNFAIRLY PREJUDICED MINORITY SHAREHOLDERS; STANDING; CHOICE OF LAW; JURISDICTION; DISMISSAL OF CERTAIN CAUSES OF ACTION;
Supreme Court, New York County, among other things, granted defendants' motions to dismiss the fourth, sixth, seventh, ninth and tenth causes of action for lack of standing, and to dismiss the complaint as against Benton Street Partners for lack of jurisdiction; App. Div. modified to allow plaintiff to replead, as limited in the court's decision, the fourth and sixth causes of action, and otherwise affirmed.

EDWARD (ALBERT), PEOPLE v:
App. Term, 1st Dept. order of 3/22/16; affirmance; leave to appeal granted by DiFiore, Ch.J., 7/13/16;
CRIMES - POSSESSION OF WEAPON - SUFFICIENCY OF ACCUSATORY INSTRUMENT - WHETHER FACTUAL ALLEGATIONS WERE SUFFICIENT TO SUPPORT CHARGE OF CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE, WHERE DEFENDANT WAS ARRESTED FOR TRESPASSING IN THE LOBBY OF A HOUSING AUTHORITY BUILDING AND THE ACCUSATORY INSTRUMENT ALLEGED THAT, UPON HIS ARREST, THE POLICE RECOVERED "A BOX CUTTER FROM THE DEFENDANT AND DEFENDANT STATED IN SUBSTANCE, I USE IT ON THE TRAIN FOR PROTECTION" - POSSESSION OF "DANGEROUS KNIFE" OR A "DANGEROUS OR DEADLY INSTRUMENT OR WEAPON" WITH INTENT TO USE IT "UNLAWFULLY AGAINST ANOTHER" (PENAL LAW § 265.01[2]);
Criminal Court of the City of New York, New York County, convicted defendant, upon his guilty plea, of criminal possession of a weapon in the fourth degree; App. Term affirmed.

TAYLOR, PEOPLE ex rel. v DOLCE:
4TH Dept. App. Div. order of 6/10/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - WHETHER HABEAS CORPUS LIES WHERE CHALLENGED ERRORS WERE OR COULD HAVE BEEN RAISED ON DIRECT APPEAL OR POST-JUDGMENT MOTION;
Supreme Court, Orleans County, dismissed the petition for a writ of habeas corpus; App. Div. affirmed.

WANG v LSUC, et al.:
1ST Dept. App. Div. orders of 3/10/16 and 7/14/16; affirmance and denial of reargument or leave to appeal to the Court of Appeals; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
COURTS - JURISDICTION - LONG-ARM JURISDICTION - WHETHER THE COURTS BELOW PROPERLY HELD THAT PLAINTIFF FAILED TO SHOW DEFENDANTS TRANSACTED SIGNIFICANT BUSINESS IN NEW YORK OR ANY IN-STATE CONNECTION TO HIS CLAIMS; CRIMES - CONSPIRACY - WHETHER THE COURTS BELOW CORRECTLY CONCLUDED THAT PLAINTIFF FAILED TO DEMONSTRATE THAT DEFENDANTS WERE SUBJECT TO CONSPIRACY JURISDICTION;
Supreme Court, New York County, granted defendants' motions to dismiss the complaint, with prejudice, for lack of jurisdiction; App. Div. affirmed, and thereafter, denied plaintiff's motions for reargument or leave to appeal.