COURT OF APPEALS NEW FILINGS

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

July 24, 2015 through July 30, 2015

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.

BROWNLEE, MATTER OF v ANNUCCI, et al.:
4TH Dept. App. Div. order of 7/2/15; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO VIOLATION OF VARIOUS INMATE RULES;
Supreme Court, Seneca County, transferred the CPLR article 78 proceeding to the App. Div.; App. Div. confirmed respondents' determination which found, after a Tier III hearing, that petitioner had violated various inmate rules, and dismissed the petition.

BRUNELLE & HADJIKOW, P.C. v O'CALLAGHAN:
1st Dept. App. Div. orders of 3/19/15 and 6/18/15; sua sponte examination whether the 6/18/15 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;
ACCOUNTS AND ACCOUNTING - ACCOUNT STATED - LEGAL FEES - SUMMARY JUDGMENT AWARDED TO LAW FIRM IN ACTION TO RECOVER LEGAL FEES; DENIAL OF MOTION FOR REARGUMENT OR LEAVE TO APPEAL TO THE COURT OF APPEALS;
Supreme Court, New York County, granted plaintiff's motion for summary judgment and awarded plaintiff $157,662.46, plus 9% simple annual interest; App. Div. affirmed and then denied defendant's motion for reargument or leave to appeal to the Court of Appeals.

COUNTY OF CAYUGA, MATTER OF v SHAH:
4TH Dept. App. Div. order of 6/12/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONER AND REIMBURSE PETITIONER FOR THOSE EXPENDITURES;
Supreme Court, Cayuga County, in a CPLR article 78 proceeding and declaratory judgment action, among other things, annulled the respondents-defendants' determination dated 2/10/14 that denied petitioner-plaintiff's claim for reimbursement of overburden expenses incurred prior to 1/1/06; App. Div. modified by denying the petition-complaint in its entirety and granting judgment in favor of respondent-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of section 1 of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional.

DAVIS v STATE OF NEW YORK:
3RD Dept. App. Div. order of 6/18/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
STATE - COURT OF CLAIMS - JURISDICTION - WHETHER THE COURT OF CLAIMS HAD SUBJECT MATTER JURISDICTION OVER ACTION SEEKING DAMAGES FOR BOARD OF PAROLE'S ALLEGED FAILURE TO PERSONALLY INTERVIEW CLAIMANT PURSUANT TO EXECUTIVE LAW § 259-i(2)(a)(i) BEFORE MAKING ITS 2013 DECISION DENYING HIM PAROLE, OR WHETHER SUCH CHALLENGE HAD TO BE BROUGHT IN A CPLR ARTICLE 78 PROCEEDING IN SUPREME COURT;
Court of Claims granted defendant's motion to dismiss the claim and dismissed the claim; App Div. affirmed.

LIN (HAO), PEOPLE v:
App. Term, 2nd, 11th and 13th Judicial Districts; reversal; leave to appeal granted by Abdus-Salaam, J., 7/2/15;
CRIMES - RIGHT OF CONFRONTATION - WHETHER A POLICE OFFICER WHO OBSERVED THE ADMINISTRATION OF A BREATHALYZER TEST TO DEFENDANT BY ANOTHER OFFICER, WHO WAS ALSO QUALIFIED TO ADMINISTER THAT BREATHALYZER TEST, AND WHO TESTIFIED AT TRIAL BECAUSE THE TESTING OFFICER WAS UNAVAILABLE, SATISFIED THE STANDARDS FOR QUALIFYING AS A SUBSTITUTE WITNESS UNDER BULLCOMING v NEW MEXICO (564 US ___, 131 S Ct 2705[2011]);
Criminal Court of the City of New York, Kings County, convicted defendant, upon a jury verdict, of driving while intoxicated in violation of Vehicle Traffic Law §§ 1192(2) and (3); App. Term reversed and remitted the matter to Criminal Court for a new trial.

COUNTY OF MONROE, MATTER OF v SHAH:
4TH Dept. App. Div. order of 6/12/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONER AND REIMBURSE PETITIONER FOR THOSE EXPENDITURES;
Supreme Court, Monroe County, in a CPLR article 78 proceeding and declaratory judgment action, among other things, annulled the respondents-defendants' determinations dated 2/20/14 and 3/6/14 denying petitioner-plaintiff's reimbursement claims; App. Div. modified by denying the petition-complaint in its entirety and granting judgment in favor of respondent-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of section 1 of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional.

REGENCY OAKS CORPORATION v NORMAN-SPENCER McKERNAN, INC.:
4TH Dept. App. Div. order of 6/12/15; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
FRAUD - WHAT CONSTITUTES - ISSUANCE OF FALSE POLICY - WHETHER PARTIAL SUMMARY JUDGMENT ON LIABILITY WAS PROPERLY GRANTED TO PLAINTIFF IN FRAUD ACTION ALLEGING THAT DEFENDANT IS LIABLE FOR THE ACTS OF ITS FORMER EMPLOYEE, WHO PROVIDED PLAINTIFF WITH A FALSIFIED WORKERS' COMPENSATION INSURANCE POLICY AND A CERTIFICATE OF LIABILITY INSURANCE PURPORTEDLY ISSUED BY AMERICAN INTERNATIONAL GROUP;
Supreme Court, Monroe County, granted plaintiff's motion for partial summary judgment on liability; App. Div. affirmed.

STONE (JOHN), PEOPLE v:
1ST Dept. App. Div. order of 10/30/14; affirmance; leave to appeal granted by Lippman, Ch.J., 6/19/15;
CRIMES - TRIAL - MISTRIAL - WHETHER MOTION FOR MISTRIAL WAS PROPERLY DENIED WHERE THE TRIAL COURT STRUCK AND INSTRUCTED THE JURY TO DISREGARD TESTIMONY BY INVESTIGATING DETECTIVE THAT, AFTER INTERVIEWING DEFENDANT'S WIFE, A WITNESS TO THE CRIME WHO DID NOT TESTIFY AT TRIAL, THE DETECTIVE CONDUCTED SEVERAL COMPUTER CHECKS ON DEFENDANT, "THE PERSON THAT HAD BEEN INDICATED AS A SUSPECT" - PREJUDICIAL EFFECT OF TESTIMONY; VERDICT - SETTING VERDICT ASIDE - ALLEGED JURY MISCONDUCT - WHETHER THE TRIAL COURT ERRED IN DENYING MOTION TO SET ASIDE VERDICT BASED UPON STATEMENTS MADE BETWEEN COMPLAINANT AND A JUROR WITHOUT HOLDING A HEARING - CPL 330.40(2)(c-e);
Supreme Court, Bronx County, convicted defendant, after a jury trial, of assault in the first degree, and sentenced him to a term of 22 years; App. Div. affirmed.

WILSON v DANTAS, et al.:
1ST Dept. App. Div. order of 4/14/15; modification; leave to appeal granted by App. Div., 7/14/15; sua sponte examination whether the appeal has been rendered moot by plaintiff's June 2015 filing of an amended complaint;
COURTS - JURISDICTION - LONG-ARM JURISDICTION - INTERNATIONAL FINANCIAL TRANSACTION - TRANSACTION OF BUSINESS IN NEW YORK - EXECUTION OF CONTRACTS IN NEW YORK - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE COMPLAINT SUFFICIENTLY ALLEGED THAT DEFENDANTS TRANSACTED BUSINESS IN NEW YORK AND THAT PLAINTIFF'S CAUSES OF ACTION ARISE FROM DEFENDANTS' NEW YORK CONTACTS - WHETHER THE APPELLATE DIVISION CORRECTLY REJECTED DEFENDANTS' CONTENTION THAT THE ACTION SHOULD BE DISMISSED ON THE GROUND OF FORUM NON CONVENIENS;
Supreme Court, New York County, granted the CPLR 3211 motion of defendants Dantas, Opportunity Equity Partners, Ltd., and Opportunity Invest II, Inc. to dismiss the complaint as against them for lack of personal jurisdiction; App. Div. modified by denying the motion as to the first, second, fourth and sixth through eighth causes of action.