

COURT OF APPEALS NEW FILINGS

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

July 31, 2015 through August 6, 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.

COFFED, &c. v McCARTHY et al.:

4TH Dept. App. Div. order of 7/2/15; reversal with two-Justice dissent; Rule 500.11 review pending;

NEGLIGENCE - PROXIMATE CAUSE - ACTION SEEKING DAMAGES FOR FATAL INJURIES SUSTAINED BY DECEDENT WHEN THE BICYCLE HE WAS RIDING COLLIDED WITH A DUMP TRUCK - WHETHER THE APPELLATE DIVISION ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANTS UPON THE GROUND THAT DECEDENT'S FAILURE TO STOP AT A RED LIGHT WAS THE SOLE PROXIMATE CAUSE OF THE ACCIDENT;

Supreme Court, Erie County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion and dismissed the complaint.

GREEN v METROPOLITAN TRANSPORTATION AUTHORITY BUS COMPANY,
et al.:

1ST Dept. App. Div. order of 4/7/15; modification; leave to appeal granted by App. Div., 7/2/15; Rule 500.11 review pending, and sua sponte examination whether appellant Lewis is aggrieved by the Appellate Division order from which leave to appeal was granted;

NEGLIGENCE - EMERGENCY DOCTRINE - SUMMARY JUDGMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE MTA DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT UNDER THE EMERGENCY DOCTRINE; JUDGMENTS - SUMMARY JUDGMENT - NEED FOR DISCOVERY - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE SUMMARY JUDGMENT MOTION WAS NOT PREMATURE;

Supreme Court, New York County, granted the motion of defendants Laws and Santiago to dismiss plaintiff's causes of action against them and denied the MTA defendants' cross motion for summary judgment; thereafter, Supreme Court denied the MTA defendants' motion to renew, granted their motion to reargue their cross motion for summary judgment, and upon reargument, adhered to its initial order; App. Div. modified the second Supreme Court order to grant upon reargument the cross motion of the MTA defendants for summary judgment, and 2) dismissed, as academic, the appeal from the initial Supreme Court order.

MENKES v GOLOMB:

1ST Dept. App. Div. order of 5/19/15; affirmance with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

ATTORNEY AND CLIENT - COMPENSATION - FEE-SHARING AGREEMENT - WHETHER THE APPELLATE DIVISION ERRED IN GRANTING MOTIONS TO FIX ATTORNEYS' FEES AT CERTAIN STATED PERCENTAGES UPON THE GROUND THAT THE AGREEMENTS AT ISSUE UNAMBIGUOUSLY PROVIDED FOR THE SHARING OF FEES AT THOSE PERCENTAGES;

Supreme Court, New York County, among other things, (1) denied attorney Sheryl Menkes' motion to fix attorney David B. Golomb's share of net attorneys' fees at 12% and to determine attorney Jeffrey A. Manheimer's share of net attorneys' fees on a quantum meruit basis, (2) granted Manheimer's cross motion to fix his share of net attorneys' fees at 20% and (3) granted Golomb's cross motion to fix his share of net attorneys' fees at 40%; App. Div. affirmed.

SILVERMAN v DAILY NEWS, L.P.:

2ND Dept. App. Div. order of 6/24/15; affirmance; 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;

LIBEL AND SLANDER - OPINIONS - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING PLAINTIFF'S DEFAMATION CLAIMS ON THE BASIS THAT THE CHALLENGED STATEMENTS CONSTITUTED NONACTIONABLE OPINION; Supreme Court, Queens County, granted the motion of defendants Daily News, L.P., Corinne Lestch, and Larry McShane pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them; App. Div. affirmed.