

COURT OF APPEALS NEW FILINGS

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

August 5, 2016 through August 11, 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.

BATISTA v MANHATTANVILLE COLLEGE, et al.:

1ST Dept. App. Div. order of 4/21/16; modification; leave to appeal granted by App. Div., 7/21/16; Rule 500.11 review pending;
LABOR - SAFE PLACE TO WORK - PLAINTIFF INJURED IN FALL WHEN PLANK HE WAS STANDING ON BROKE - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT FACTUAL ISSUES REGARDING USE OF PINE PLANKS FOR FLOORING ON SCAFFOLD PRECLUDED AWARD OF SUMMARY JUDGMENT ON LABOR LAW § 240(1) CLAIM;

Supreme Court, Bronx County, granted plaintiff's motion for summary judgment on the issue of liability on his Labor Law § 240(1) claim, denied the part of defendants Manhattanville College's and TJR, Inc.'s motions for summary judgment seeking dismissal of the Labor Law § 240(1) claim as against them and deemed the part of their motions seeking dismissal of the Labor Law § 241(6) claim to be moot; App. Div. modified to deny plaintiff's motion, and to grant the part of defendants' motions seeking dismissal of plaintiff's Labor Law § 241(6) claim except insofar as the claim is predicated on violations of Industrial Code (12 NYCRR) § 23-5.1(e), (g) and (h), and otherwise affirmed.

DENNEHY et al. v COPPERMAN, et al.:

1st Dept. App. Div. order of 12/17/15; modification; leave to appeal granted by App. Div., 7/21/16;

PHYSICIANS AND SURGEONS - MALPRACTICE - WHETHER THE ACCRUAL DATE FOR A "WRONGFUL BIRTH" MEDICAL MALPRACTICE ACTION IS THE DATE OF BIRTH OR THE DATE OF THE CLAIMED MALPRACTICE - CPLR 214-a; STATUTE OF LIMITATIONS; DISMISSAL OF CLAIMS;

Supreme Court, New York County, among other things, denied defendants' motions to strike the request for punitive damages and to dismiss the causes of action for medical malpractice, lack of informed consent, breach of contract and negligence; App Div. modified to grant defendants' motions to the extent of dismissing the causes of action for breach of contract and negligence, and otherwise affirmed.

B. F., et al. v REPRODUCTIVE MEDICINE ASSOCIATES OF NEW YORK, LLP, et al.:

1st Dept. App. Div. order of 12/17/15; modification; leave to appeal granted by App. Div., 7/21/16;

PHYSICIANS AND SURGEONS - MALPRACTICE - WHETHER THE ACCRUAL DATE FOR A "WRONGFUL BIRTH" MEDICAL MALPRACTICE ACTION IS THE DATE OF BIRTH OR THE DATE OF THE CLAIMED MALPRACTICE - CPLR 214-a; STATUTE OF LIMITATIONS; DISMISSAL OF CLAIMS;

Supreme Court, New York County, among other things, denied defendants' motions to dismiss the first six causes of action of the complaint and to strike the demand for punitive damages; App. Div. modified to grant defendants' motions to the extent of dismissing the first, third, fourth, fifth and sixth causes of action, and otherwise affirmed.

FLORES (MARY ANN GRADY), PEOPLE v:

Onondaga County Court order of 1/8/16; modification; leave to appeal granted by Fahey, J., 6/23/16;

CRIMES - CRIMINAL CONTEMPT - ORDER OF PROTECTION AS PREDICATE FOR CRIMINAL CONTEMPT CHARGE AGAINST PROTESTER IN PUBLIC STREET IN FRONT OF MILITARY BASE - CHALLENGE TO VALIDITY AND SPECIFICITY OF ORDER OF PROTECTION; CLAIMED ERROR OF TRIAL COURT IN RESPONSE TO JURY QUESTION;

Town Court, Town of DeWitt, after a jury trial, convicted defendant of criminal contempt in the second degree for violation of an order of protection, and sentenced her to one year in the Onondaga County Correctional Facility plus a \$1,000 fine; County Court modified by reducing the sentence of incarceration imposed to that of six months in the Onondaga County Correctional Facility and, as so modified, affirmed.

GAINES, &c. v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 3/29/16; affirmance; leave to appeal granted by App. Div., 7/21/16; Rule 500.11 review pending;
TRUSTS - CREATION - DEATH OF PLAINTIFF'S DAUGHTER BEFORE COMPLETION OF DOCUMENTS CREATING AND FUNDING A SUPPLEMENTAL NEEDS TRUST (SNT) AFTER SETTLEMENT OF A PERSONAL INJURY ACTION - DENIAL OF PLAINTIFF'S MOTION TO OBTAIN THE PRINCIPAL AND INTEREST IN THE SNT, AS POTENTIAL REMAINDERMAN OF TRUST;
Supreme Court, Bronx County, denied claimant's cross motion to, among other things, amend a prior order; App. Div. affirmed.

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., et al. v CITY OF NEW YORK, et al.:

1ST App. Div. order of 6/23/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - HOME RULE POWERS - WHETHER LOCAL LAW NO. 71 (2013) OF CITY OF NEW YORK § 1, WHICH PROHIBITS DISCRIMINATORY POLICING IN NEW YORK CITY, IS PREEMPTED BY THE CRIMINAL PROCEDURE LAW UNDER FIELD OR CONFLICT PREEMPTION PRINCIPLES;
Supreme Court, New York County, declared that Local Law 71, is not preempted by the Criminal Procedure Law; denied defendants' cross motion to dismiss for lack of standing; declared that Local Law 71, is not void for vagueness, and denied, as moot, plaintiffs' motion for a permanent injunction enjoining the operation of Local Law 71; App. Div. affirmed.

MATTER OF PEOPLE OF THE STATE OF NEW YORK, &c. v THE TRUMP ENTREPRENEUR INITIATIVE, LLC, &c, et al.:

1ST Dept. App. Div. order of 3/1/16; modification; leave to appeal granted by App. Div., 5/17/16, as corrected 8/18/16;
FRAUD - OPERATION OF UNLICENSED EDUCATIONAL INSTITUTION - SPECIAL PROCEEDING BY ATTORNEY GENERAL TO ENJOIN FRAUDULENT OR ILLEGAL ACTS UNDER EXECUTIVE LAW § 63(12) - WHETHER THE APPELLATE DIVISION PROPERLY REINSTATED THE STATE'S CAUSE OF ACTION PURPORTING TO ALLEGE FRAUD UNDER EXECUTIVE LAW § 63(12) AS AN INDEPENDENT CAUSE OF ACTION - APPLICABILITY OF RESIDUAL SIX-YEAR STATUTE OF LIMITATIONS IN CPLR 213(1) - NECESSITY TO ESTABLISH ELEMENTS OF SCIENTER AND RELIANCE; AFFIRMATIVE DEFENSES - WHETHER THE TRIAL COURT PROPERLY DISMISSED RESPONDENTS' AFFIRMATIVE DEFENSES IN PART; DISCOVERY - WHETHER THE TRIAL COURT PROPERLY DENIED RESPONDENTS' REQUEST FOR DISCOVERY IN PART;

Supreme Court, New York County, granted respondents' motions for summary dismissal of the first cause of action alleging fraud under Executive Law § 63(12); denied petitioner's motion for summary determination as to its common-law fraud claim; denied respondents' motion to convert this special proceeding into a plenary action or for leave to conduct additional discovery as to the remaining causes of action; and granted petitioner's motion to strike certain of the Trump respondents' affirmative defenses; App. Div. modified to deny the motion to dismiss the first cause of action and otherwise affirmed.