State of New York
Court of Appeals

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Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

COURT OF APPEALS NEW FILINGS

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

August 12, 2022 through August 18, 2022

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.

MATTER OF BLACK v NEW YORK STATE TAX APPEALS TRIBUNAL:
3rd Dept. App. Div. order of 6/30/22; confirmation of determination with dissents;
Taxation--Personal Income Tax--Employee Withholding Taxes--Whether the determination of the Tax Appeals Tribunal holding petitioner responsible for corporation's tax liability has a rational basis and is supported by substantial evidence;
App. Div. confirmed the determination of respondent Tax Appeals Tribunal sustaining two notices of deficiency of employee withholding taxes against the petitioner and dismissed the CPLR article 78 petition.

VITUCCI v DURST PYRAMID LLC:

1st Dept. App. Div. order of 5/3/22 modification with two Justices dissenting in part; leave to appeal granted by the Appellate Division on a certified question;
Labor--Safe Place to Work--Whether the courts below erred in granting partial summary judgment to plaintiffs on their Labor Law § 240 (1) claim; plaintiff injured while installing a shower curtain rod in the bathroom; whether the Appellate Division properly disregarded an expert affidavit concerning the accident;
Supreme Court, New York County, granted plaintiffs' motion for summary judgment on the Labor Law § 240 (1) claim as against defendants Durst Pyramid LLC and Hunter Roberts Construction Group, LLC (together, Durst/Hunter) and declined to address plaintiffs' motion as to Labor Law § 241 (6), denied Durst/Hunter's motion for summary judgment dismissing the complaint as against them and for summary judgment on their contractual and common-law indemnification cross claims, granted defendant Fred Geller Electrical, Inc.'s (Geller) motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims as against it, and denied Geller's motion for summary judgment dismissing the Labor Law § 241 (6) claim as against it insofar as based on an alleged violation of Industrial Code (12 NYCRR) § 23-1.30 and the contractual and common-law indemnification, contribution, and breach of contract cross claims; App. Div. modified to deny plaintiffs' motion for summary judgment on the Labor Law § 241 (6) claim as against Durst/Hunter, deny Geller's motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims as against it, grant Durst/Hunter conditional summary judgment on their contractual indemnification cross claims, and grant Geller's motion for summary judgment dismissing the breach of contract cross claims, and otherwise affirmed.

PEOPLE v NOE ZAPATA:
2nd Dept. App. Div. order of 5/4/22; affirmance; leave to appeal granted by Wilson, J., 7/29/22;
Crimes--Sentence--Whether CPL 420.35(2-a), which allows courts to waive fees and surcharges for defendants who were less than 21 years old at the time of the offense, applies to cases pending on direct appeal at the time of the statute's enactment; whether defendant was required to preserve the claim that CPL 420.35(2-a) allowed for the waiver of fees and surcharges;
Supreme Court, Kings County, convicted defendant of attempted robbery in the second degree under Indictment No. 5975/18, and criminal possession of a firearm under Indictment No. 851/18, and imposed sentence; App. Div. affirmed.