State of New York
Court of Appeals

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Lisa LeCours
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 11, 2023 through August 17, 2023

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.

BRISMAN (JASON), PEOPLE v:
3rd Dept. App. Div. order of 12/9/21; affirmance; leave to appeal granted by Wilson, Ch.J., 7/19/23; Rule 500.11 review pending;
Crimes—Sentence—Whether Appellate Division erred in requiring a showing of extraordinary circumstances or an abuse of discretion to invoke its interest of justice jurisdiction to reduce a sentence; whether the Appellate Division properly held that defendant failed to preserve his claim that the sentence imposed served to punish him for exercising his right to a trial; whether the evidence at trial was legally sufficient to establish that defendant committed the crime of promoting prison contraband in the first degree;
County Court, Chemung County, upon a verdict convicted defendant of the crime of promoting prison contraband in the first degree; App. Div. affirmed.

MATTER OF HUNTLEY POWER v TOWN OF TONAWANDA (Proceeding 1):
4th Dept. App. Div. order of 6/9/23; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Eminent Domain—Public Use—Whether the Town's failure to timely publish its determination and findings in compliance with EDL 204(a) is a fatal defect requiring rejection of the determination and findings; whether the taking fails to serve a public purpose and violates the New York and United States Constitutions; whether the Town failed to comply with the requirements of the State Environmental Quality Review Act;
App. Div. in a proceeding pursuant to Eminent Domain Procedure Law § 207 to review a determination of respondent approving the condemnation of certain real property, dismissed the proceeding.

MATTER OF HUNTLEY POWER v TOWN OF TONAWANDA (Proceeding 2):
4th Dept. App. Div. order of 6/9/23; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Eminent Domain—Public Use—Whether the Town's failure to timely publish its determination and findings in compliance with EDL 204(a) is a fatal defect requiring rejection of the determination and findings; whether the taking fails to serve a public purpose and violates the New York and United States Constitutions; whether the Town failed to comply with the requirements of the State Environmental Quality Review Act;
App. Div. in a proceeding pursuant to Eminent Domain Procedure Law § 207 to review a determination of respondent approving the condemnation of certain real property, confirmed the determination and dismissed the petition.

MATTER OF IBHAWA v NYSDHR:
4th Dept. App. Div. order of 6/30/23; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Civil Rights—State Division of Human Rights—Whether respondent New York State Division of Human Rights properly dismissed petitioner's administrative discrimination complaint against respondent Diocese of Buffalo for lack of jurisdiction based on the ministerial exception to employment discrimination claims;
Supreme Court, Erie County, in this proceeding pursuant to Executive Law § 298 seeking to annul the determination of respondent New York State Division of Human Rights dismissing petitioner's administrative discrimination complaint against his former employer for lack of jurisdiction, granted the petition in part by annulling the determination insofar as it dismissed the claim of hostile work environment and remanded the matter; App. Div. reversed, dismissed petition in its entirety, and reinstated determination to the extent it dismissed the hostile work environment claim.

MATTER OF KASOWITZ BENSON v JP MORGAN CHASE:

1st Dept. App. Div. order of 10/18/22; affirmance; leave to appeal granted by the Court of Appeals, 6/15/23;
Liens—Priority—Whether assignees are required to intervene in post-assignment suits involving their assignors on penalty of being bound by the judgment in that suit in future litigation;
Supreme Court, New York County, granted the Dakota's summary judgment motion and denied Chase's summary judgment motion, unanimously dismissed, without costs, as subsumed in the appeal from the judgment; Supreme Court, New York County declared that the lien of The Dakota, Inc. is prior to that of JPMorgan Chase Bank, N.A, App. Div. affirmed judgment and dismissed appeal from 8/4/21 order as subsumed in the appeal from the judgment.

MAKHNEVICH v BOARD OF MANAGERS:
1st Dept. App. Div. order of 6/29/23; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
Appeal—Dismissal—Whether the Appellate Division properly dismissed the appeal from the 3/28/22 order; alleged due process violations;
Supreme Court, New York County, denied plaintiff's motion to resettle or clarify the 11/15/21 order; Supreme Court, New York County, denied plaintiff's motion to renew defendants' motions; Supreme Court, New York County, granted defendants' motion to dismiss the complaint; App. Div. affirmed 7/21/21 order and 11/15/21 order, and dismissed appeal from 3/28/22 order.