COURT OF APPEALS NEW FILINGS

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

August 11, 2017 through August 17, 2017

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.

AMBAC ASSURANCE CORPORATION, et al. v COUNTRYWIDE HOME LOANS, INC., et al.:
1ST Dept. App. Div. order of 5/16/17; modification; leave to appeal granted by the App. Div., 7/25/17;
Fraud--Fraud in Inducement--Alleged fraudulent inducement to issue financial guaranty insurance policies for residential mortgage-backed securitizations--elements to establish cause of action for fraudulent inducement--justifiable reliance--applicability of Insurance Law § 3105; recovery of claims payments made by insurer--contractual repurchase protocol; recovery of attorneys' fees; summary judgment;
Supreme Court, New York County, granted in part and denied in part plaintiffs' and the Countrywide defendants' respective motions for summary judgment; App. Div. modified, to the extent indicated in the court's decision, and otherwise affirmed.

DIAZ (EMMANUEL), PEOPLE v:
2ND Dept. App. Div. order of 4/19/17; affirmance; leave to appeal granted by Hall, J., 8/3/17; Rule 500.11 review pending;
Crimes--Evidence--Whether defendant's telephone calls from prison were improperly admitted into evidence in the absence of his consent to release of the recordings to the prosecution; right to counsel--effective representation--whether defendant was deprived of the effective assistance of counsel as a result of his trial counsel's failure to request that the jury be charged on the affirmative defense that the object which he displayed was not a loaded weapon;
Supreme Court, Kings County, convicted defendant, upon a jury verdict, of robbery in the first degree and burglary in the first degree, and imposed sentence; App. Div. affirmed.

GERRISH v 56 LEONARD LLC, et al.:
1ST Dept. App. Div. order of 2/16/17; reversal; leave to appeal granted by App. Div., 7/18/17; Rule 500.11 review pending;
Labor--Safe Place to Work--Where plaintiff was fabricating steel rebars at an off-site temporary project facility in the Bronx for a construction project located in Manhattan, whether plaintiff was working in a construction area within the meaning of Labor Law § 241(6); whether a question of fact exists as to involvement of defendants property owner and construction manager with off-site temporary construction facility;
Supreme Court, New York County, granted the motion of defendants 56 Leonard LLC and Lend Lease (US) Construction LMB, Inc. to dismiss plaintiff's Labor Law § 241(6) claim against them; App. Div. reversed and denied the motion.

MAKI v BASSETT HEALTHCARE, et al.:
3RD Dept. App. Div. order of 3/30/17; denial of motions; sua sponte examination whether a second appeal may be taken from the 3/30/17 App. Div. order;
Appeal--Appellate Division--Denial of appellant's vacatur motion; App. Div. denied appellant's vacatur motion and respondents' cross motion for sanctions.

ST. LAWRENCE COUNTY SUPPORT COLLECTION UNIT &c., MATTER OF v BOWMAN:
3RD Dept. App. Div. order of 7/13/17; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Motions and Orders--Order to Show Cause--Reargument or Renewal--Appealability of order denying ex parte motion to issue an order to show cause and order denying reargument; alleged violations of due process and equal protection clauses; claimed violation of the constitutional right to petition the government for redress of grievances;

Family Court, St. Lawrence County, denied respondent's motion for an order to show cause (4/6/16 order); and thereafter, denied respondent's motion to renew and reargue (6/6/16 order); App. Div. affirmed the 6/6/16 order, and dismissed the appeal from the 4/6/16 order.