



State of New York
Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095
(518) 455-7700

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COURT OF APPEALS NEW FILINGS

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

August 23, 2024 through August 29, 2024

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.

BANK OF NY MELLON v SANTOS:

APL-2024-00118

2nd Dept. App. Div. order of 7/17/24; denied motion; sua sponte examination of 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;

Motions and Orders—Whether the Appellate Division properly denied plaintiff's motion for leave to appeal or for an order directing execution of a final judgment of dismissal and, on its own motion, dismissed the appeal purportedly taken as of right; whether plaintiff was improperly denied its appellate rights;

Supreme Court, Rockland County, denied plaintiff's motion for an order resettling a prior dismissal order; App. Div. denied branches of motion which are for leave to appeal or, in the alternative for an order directing the Clerk of Supreme Court, Rockland County, to

execute a final judgment of dismissal, on the court's own motion, dismissed the appeal purportedly taken as of right, and otherwise denied the motion as academic.

MATTER OF FLAIR BEVERAGES CORP. v TAX APPEALS TRIBUNAL:

APL-2024-00105

3rd Dept. App. Div. order of 7/25/24; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Taxation—Whether respondents violated petitioner’s due process rights under the federal and New York Constitutions by revoking petitioner’s certificate of authority without apprising petitioner that revocation was a potential penalty for failure to file information returns; Whether Tax Law section 1134(a)(4)(A)(i) is unconstitutionally vague as applied; whether the Appellate Division’s determination that petitioner willfully failed to comply with the law is supported by substantial evidence; whether respondents imposed a disproportionate punishment and abused their discretion by proposing to revoke petitioner’s certificate of authority without proper notice or evidence of harm resulting from the alleged violations;

App. Div. in a proceeding pursuant to CPLR article 78 to review a determination of respondent Tax Appeals Tribunal sustaining a proposed revocation of petitioner’s certificate of authority to collect sales tax under Tax Law article 28, confirmed the determination, and dismissed the petition.

PEOPLE v JOHNSON (OMAR):

APL-2024-00111

1st Dept. App. Div. order of 3/12/24; affirmance; leave to appeal granted by Troutman, J., 8/12/24;

Crimes—Appeal—Whether defendant’s waiver of his right to appeal forecloses review of his claim that his weapon possession conviction is unconstitutional under New York State Rifle & Pistol Assn., Inc. v Bruen (597 US 1 [2022]); whether defendant has standing to challenge the constitutionality of the New York weapon licensing provision underlying his conviction even though he did not apply for a license to possess the weapon; whether the trial court erred in rejecting defendant’s claim that all counts in the indictment had to be dismissed because they violated his Second Amendment right to carry a firearm in public by requiring him to obtain a license under an unconstitutional licensing scheme;

Supreme Court, Bronx County, convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second degree, and sentenced him to five years’ probation; App. Div. affirmed.

KEGELMAN v TOWN OF OTSEGO:

APL-2024-00114

3rd Dept. App. Div. order of 7/18/24; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Limitation of Actions—Whether plaintiffs’ converse condemnation action was properly dismissed as untimely;

Supreme Court, Otsego County, granted defendant’s cross-motion for summary judgment dismissing the complaint; App. Div. affirmed.

MATTER OF LEWIS v BOARD OF ELECTIONS:

APL-2024-00120

3rd Dept. App. Div. order of 8/27/24; dismissal; 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 erred as a matter of law or abused its discretion in dismissing the appeal;

Supreme Court, Albany County, dismissed the proceeding as untimely pursuant to Election Law 16-102 (2); App. Div. granted the motion to dismiss the appeal.