COURT OF APPEALS NEW FILINGS

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

August 28, 2015 through September 3, 2015

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.

CONSTELLATION NUCLEAR POWER PLANTS, MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.:
3RD Dept. App. Div. judgment of 7/16/15; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
TAXATION - FRANCHISE TAX ON BUSINESS CORPORATIONS - INVESTMENT AND INDUSTRIAL MANUFACTURING TAX CREDITS - WHETHER ASSETS USED AT NUCLEAR POWER PLANTS TO CONVERT WATER TO STEAM AND STEAM TO WATER SHOULD BE TREATED AS PRINCIPALLY USED IN THE PRODUCTION OF GOODS BY MANUFACTURING OR PROCESSING WHERE THE POWER PLANTS GENERATE AND SELL ELECTRICITY AS AN END PRODUCT; ELIGIBILITY OF ASSETS CLAIMED TO BE AIR POLLUTION AND CONTROL WASTE TREATMENT

FACILITIES FOR CERTAIN TAX CREDITS WHERE PETITIONER FAILED TO OBTAIN REQUIRED CERTIFICATIONS FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) - CONSTITUTIONAL OF DEC CERTIFICATION REQUIREMENT AS APPLIED TO PETITIONER - TAX LAW § 210.12(b)(iii) - ALLEGED VIOLATION OF PETITIONER'S RIGHT TO THE EQUAL PROTECTION OF THE LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS;
App. Div. confirmed a determination of the Tax Appeals Tribunal denying petitioner's application for a refund of investment tax credits under Tax Law article 9-A, and dismissed the CPLR article 78 petition.

JUSTINIAN CAPITAL SPC &c. v WestLB AG, &c., et al.:
1ST Dept. App. Div. order of 5/21/15; affirmance; leave to appeal granted by Court of Appeals, 8/27/15;
CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - FRAUD - AGREEMENT TO PURCHASE NOTES - WHETHER PLAINTIFF'S PURPORTED PURCHASE OF NOTES FROM NONPARTY BANK WAS SUFFICIENT BASIS FOR PLAINTIFF TO AVAIL ITSELF OF THE SAFE HARBOR PROVISION OF THE CHAMPERTY STATUTE (JUDICIARY LAW § 489[1]) - IF NOT, WHETHER PLAINTIFF'S ACQUISITION OF THE NOTES WAS CHAMPERTOUS;
Supreme Court, New York County, granted the "renewed motion to dismiss the complaint on the ground of champerty" by defendants WestLB, New York Branch and WestLB Asset Management (US) LLC;
App. Div. affirmed.

ALEXANDER S., MATTER OF (STEUBEN COUNTY DEPARTMENT OF SOCIAL SERVICES; DAVID S. AND ALECIA P.):
4th Dept. App. Div. order of 7/2/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PARENT, CHILD AND FAMILY - ABUSED OR NEGLECTED CHILD - TERMINATION OF PARENTAL RIGHTS - WHETHER PETITIONER DEPARTMENT OF SOCIAL SERVICES MET ITS BURDEN OF ESTABLISHING BY "CLEAR AND CONVINCING EVIDENCE" THAT THE CHILD IS A PERMANENTLY NEGLECTED CHILD; CLAIMED VIOLATION OF PARENTS' CONSTITUTIONAL RIGHTS;
Family Court, Steuben County, among other things, terminated respondents' parental rights with respect to the subject child;
App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v RICHARD TT.:
3RD Dept. App. Div. order of 8/13/15; reversal with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - SEX OFFENDER MANAGEMENT TREATMENT ACT (SOMTA) - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUPREME COURT ABUSED ITS DISCRETION IN GRANTING RESPONDENT'S MOTION TO VACATE ORDERS DETERMINING THAT RESPONDENT HAS A MENTAL ABNORMALITY AND WAS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT - SUFFICIENCY OF THE EVIDENCE OF MENTAL ABNORMALITY UNDER MATTER OF STATE OF NEW YORK v DONALD DD. (24 NY3d 174 [2014]);
Supreme Court, Warren County, in a proceeding pursuant to Mental Hygiene Law article 10, granted respondent's motion to, among other things, vacate two prior orders of the court; App. Div. reversed, and denied the motion.

WEBER, MATTER OF, AN ATTORNEY:
2ND Dept. App. Div. order of 7/1/15; suspension of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - SUSPENSION - EMPLOYMENT OF DISBARRED ATTORNEY AS A LEGAL ASSISTANT; CLAIMED DUE PROCESS VIOLATIONS;
App. Div., among other things, granted the motion of petitioner Grievance Committee for the Tenth Judicial District to confirm the report of the Special Referee, and suspended respondent from the practice of law for a period of two years, commencing August 1, 2015.