

COURT OF APPEALS NEW FILINGS

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

August 25, 2017 through August 31, 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.

DODSON (PHILLIP A.), PEOPLE v:

4TH Dept. App. Div. order of 2/3/17; affirmance; leave to appeal granted by Wilson, J., 8/7/17; Rule 500.11 review pending;

Crimes--Right to Counsel--Whether the trial court abused its discretion in denying defendant's request for substitution of assigned counsel--breakdown in communications between counsel and client;

County Court, Monroe County, convicted defendant, upon his guilty plea, of assault in the first degree; App. Div. affirmed.

SASSON, et al. v TLG ACQUISITION LLC, et al.:

1ST Dept. App. Div. order of 5/11/17; affirmance with dissents; leave to appeal granted by App. Div., 7/25/17; Rule 500.11 review pending;

Contracts--Construction--Whether the Appellate Division properly applied law of the case doctrine in electing not to re-examine its prior determination interpreting a disputed contract provision; summary judgment--whether defendants raised triable issues of fact precluding summary judgment; attorneys' fees--whether the trial court properly awarded attorneys' fees pursuant to the terms of the parties' transactional documents; interest--whether the trial court properly calculated interest due to plaintiffs;

Supreme Court, New York County, among other things, granted plaintiffs' motion for summary judgment and directed the issue of attorneys' fees to be heard by a referee (2/29/16 order); Supreme Court then granted plaintiffs' motion for summary judgment, and severed plaintiffs' claim for costs to be determined by a referee (3/10/16 order), and awarded judgment in favor of plaintiffs' (7/6/16 judgment); App. Div. affirmed the 7/6/16 judgment and dismissed appeals from the 2/29/16 and 3/10/16 orders.

TIGER (NATASCHA), PEOPLE v:

2ND Dept. App. Div. order of 3/1/17; reversal; leave to appeal granted by Garcia, J., 8/15/17;

Crimes--Vacatur of Judgment of Conviction--Whether a freestanding claim of actual innocence is cognizable under CPL 440.10(1)(h); whether a defendant who pleads guilty may assert a freestanding actual innocence claim pursuant to CPL 440.10(1)(h); whether defendant made the requisite prima facie showing of actual innocence; right to counsel--effective representation; whether counsel was ineffective for failing to investigate possible alternative cause of victim's injuries;

County Court, Orange County, denied, without a hearing, defendant's motion pursuant to CPL 440.10 to vacate a judgment rendered 10/17/12, convicting defendant of endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person, in the first degree; App. Div. reversed and remitted to County Court for a hearing and new determination of defendant's motion pursuant to CPL 440.10.