

COURT OF APPEALS NEW FILINGS

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

September 1, 2017 through September 7, 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.

GOLD, et al. v NEW YORK LIFE INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 7/18/17; modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; Arbitration--Agreement to Arbitrate--Whether the Appellate Division erred in determining that plaintiff Kartal's arbitration agreement containing a class action waiver is unenforceable as violating section 7 of the National Labor Relations Act--employee wage dispute with employer;

Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the second, third and fourth causes of action as to all plaintiffs except plaintiff Kartal, and granted defendants' motion to compel Kartal to arbitrate her claims; App. Div. modified to grant defendants' motion for summary judgment dismissing the second, third and fourth causes of action as to all plaintiffs, and to deny the motion to compel Kartal to arbitrate, and otherwise affirmed.

JONES (DAMIAN), PEOPLE v:

1ST Dept. App. Div. order of 4/4/17; affirmance; leave to appeal granted by Garcia, J., 8/14/17;

Crimes--Enterprise Corruption--whether verdict convicting defendant of enterprise corruption is supported by legally sufficient evidence; proof of "ascertainable structure" under Penal Law §§ 460.10, 460.20; Crimes--Indictment--whether prosecution constructively amended the indictment by introducing a new theory of criminal liability at trial; Crimes--Fair Trial--whether prosecutorial misconduct deprived defendant of a fair trial;

Supreme Court, New York County, convicted defendant of enterprise corruption and imposed sentence; App. Div. affirmed.

MANRAGH (ROHAN JR.), PEOPLE v:

2ND Dept. App. Div. order of 5/3/17; affirmance; leave to appeal granted by Fahey, J., 8/23/17;

Crimes--Plea of Guilty--Forfeiture of Right to Raise Issues on Appeal--whether, by pleading guilty, defendant forfeited his claim that the prosecutor failed to inform the grand jury of defendant's request to call a witness to testify before that body; CPL 190.50(6);

County Court, Suffolk County, convicted defendant of criminal contempt in the first degree and imposed sentence; App. Div. affirmed.

NICKE, et al. v SCHWARTZAPFEL PARTNERS P.C. &c., et al.:

2ND Dept. App. Div. order of 3/29/17; reversal; leave to appeal granted by App. Div., 8/15/17; Rule 500.11 review pending;

Bankruptcy--Capacity to Sue--whether plaintiffs, chapter 13 bankruptcy debtors, had capacity to maintain legal malpractice action against law firm that represented bankruptcy trustee in a personal injury action asserted on behalf of one of the plaintiffs; Estoppel--Collateral Estoppel--whether collateral estoppel barred plaintiff from commencing legal malpractice action;

Supreme Court, Nassau County, granted those branches of defendants' separate motions to dismiss the complaint insofar as asserted against each of them; App. Div. reversed and denied the motions.

THIBODEAU (GARY), PEOPLE v:

4TH Dept. App. Div. order of 6/9/17; affirmance; leave to appeal granted by Centra, J., 8/3/17; Rule 500.11 review pending; Crimes--Vacatur of Judgment of Conviction--whether County Court erred in denying that part of defendant's CPL 440.10 motion alleging a Brady violation; Newly Discovered Evidence--whether County Court properly denied that part of defendant's CPL 440.10 motion based on newly discovered evidence; Evidence--whether third-party admissions were admissible hearsay; Claim of Actual Innocence--whether county court's rejection of defendant's newly discovered evidence claim constituted an implicit rejection of his actual innocence claim;

County Court, Oswego County, denied defendant's CPL 440.10 motion to vacate his judgment of conviction; App. Div. affirmed.