



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

September 8, 2023 through September 14, 2023

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.

FARMER v GAZEBO CONTRACTING:

2nd Dept. App. Div. order of 7/19/23; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for the appeal;

Negligence—Maintenance of Premises—Whether defendant established entitlement to summary judgment dismissing complaint against it; plaintiff sustained injuries when he stepped in an uncovered hole on a sidewalk;

Supreme Court, Queens County, granted that branch of the motion of defendant Gazebo Contracting, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it, and denied those branches of the plaintiff's cross-motion which were pursuant to CPLR 3126 to strike the defendants' respective answers; App. Div., inter alia, affirmed.

FARRELL (CHRISTOPHER), PEOPLE v:

County Court, Ulster County order of 11/17/22; reversal; leave to appeal granted by Cannataro, 8/24/23;

Constitutional Law—Validity of Statute—Whether Agriculture and Markets Law § 353 is void for vagueness as applied to veterinary neglect;

City Court, Kingston, dismissed the accusatory instrument; County Court, Ulster County, reversed, reinstated accusatory instrument, and remitted to city court.

LUCAS (ANTWYNE), PEOPLE v:

2nd Dept. App. Div. order of 4/12/23; affirmance; leave to appeal granted by Troutman, J., 8/22/23;

Crimes—Right to Counsel—Effective Representation—Whether defendant was denied the effective assistance of counsel when the suppression hearing testimony established that the complainant was unsure about defendant’s role in the incident but counsel did not impeach the trial testimony of complainant or a detective that the complainant had previously identified defendant as the gunman and main perpetrator; whether defendant was denied the effective assistance of counsel when counsel consented to the omission of a jury instruction on cross-racial identification; Supreme Court, Richmond County, convicted defendant of robbery in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.