

COURT OF APPEALS NEW FILINGS

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

October 4, through October 10, 2019

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.

BATTAGLIA v MDC CONCOURSE CENTER, LLC, et al.:

4TH Dept. App. Div. order of 8/22/19; modification; Rule 500.11 review pending;

Negligence--Snow and Ice--Whether defendants established entitlement to summary judgment on plaintiff's negligence claim; plaintiff slipped and fell on ice in parking lot; application of "storm in progress" doctrine;

Supreme Court, Erie County, denied the motion of defendants MDC Concourse Center, LLC, McGuire Development Company, LLC and McGuire Management Company, LLC, for summary judgment and granted that part of the motion of defendant R.D. Trucking & Transportation, Inc., for summary judgment dismissing the amended complaint against it;

App. Div. modified by granting the motion of defendant R.D. Trucking & Transportation, Inc. in its entirety and by granting the motion of defendants MDC Concourse Center, LLC, McGuire Development Company, LLC and McGuire Management Company, LLC insofar as it sought summary judgment dismissing the amended complaint against them, and as so modified, affirmed.

ROSENTHAL v ROSENTHAL:

Supreme Court, Rockland County order of 9/11/19; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a direct appeal lies pursuant to CPLR 5601(b)(2);

Constitutional Law--Freedom of Religion--Whether New York's no-fault divorce statute (Domestic Relations Law § 170 [7]) violates defendant's constitutional right to religious freedom under the First Amendment of the United States Constitution;

Supreme Court, Rockland County, among other things, denied defendant's motion to compel arbitration of the marriage dissolution before an arbitration panel and granted plaintiff's motion to dismiss defendant's affirmative defense that New York's no-fault divorce statute (Domestic Relations Law § 170 [7]) violates defendant's constitutional right to religious freedom.

STRUJIAN v GLENCORD BUILDING CORP., et al.:

2ND Dept. App. Div. order of 8/14/19; 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;

Appeal--Appealable Paper--Appellate Division order denying motion for reargument;

App. Div. denied motion, in effect, for leave to reargue appeals from two orders of Supreme Court, Kings County (9/10/13 and 9/20/13), which were determined by decision and order of the App. Div. dated 3/30/16.

WALTON & WILLET STONE BLOCK, LLC, et al. v CAMELOT LODGE, LLC, et al.:

4TH Dept. App. Div. order of 8/22/19; reversal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether the dissent at the App. Div. is on a question of law;

Motions and Orders--Reargument or Renewal--Appellate Division reversed order of Supreme Court granting leave to renew motion to dismiss;

Supreme Court, Oswego County, granted the motion of defendant Camelot Lodge, LLC for leave to renew its motion to dismiss the second amended complaint against it and, upon renewal, dismissed plaintiffs' second amended complaint against defendant Camelot Lodge, LLC and dismissed the specific performance cause of action against all defendants; App. Div. reversed, denied defendant Camelot Lodge, LLC's motions, reinstated the second amended complaint against defendant Camelot Lodge, LLC, and reinstated the first cause of action against the remaining defendants.