

COURT OF APPEALS NEW FILINGS

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

September 30, 2016 through October 6, 2016

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.

BEECHWOOD POB, LLC v BRUMMELL:

2ND Dept. App. Div. order of 7/8/16; denial of motion; sua sponte examination 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;

INJUNCTIONS - PRELIMINARY INJUNCTION - WHETHER PRELIMINARY INJUNCTION IS UNCONSTITUTIONAL AND BASED ON ERRONEOUS FACTUAL FINDINGS;

Supreme Court, Nassau County, granted a motion, pursuant to CPLR 6311, to preliminary enjoin appellant from, among other things, filing any motions or applications relating to Denton et al. v Town of Oyster Bay and from filing any motions or applications with respect to the Town Board of the Town of Oyster Bay's May 2015 approval of a redevelopment project; App. Div. denied appellant's motion to vacate or modify the preliminary injunction granted by Supreme Court.

DAVIS, MATTER OF v ANNUCCI:

3RD Dept. App. Div. order of 6/16/16; granted petition; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO DETERMINATION BY COMMISSIONER OF CORRECTIONS AND COMMUNITY SUPERVISION FINDING PETITIONER GUILTY OF POSSESSING A WEAPON AND POSSESSING AN UNAUTHORIZED MEDICATION;

App. Div. granted the petition, in a proceeding pursuant to CPLR article 78, to the extent of modifying a determination of the Department of Corrections and Community Supervision finding appellant guilty of violating certain prison disciplinary rules by annulling so much thereof as found petitioner guilty of possessing an authorized medication and imposed a penalty, and remitted the matter for an administrative redetermination of the penalty on the remaining violation.

DESROSIERS v PERRY ELLIS MENSWEAR, LLC:

1ST Dept. App. Div. order of 5/10/16; reversal; leave to appeal granted by App. Div., 9/29/16;

ACTIONS - CLASS ACTIONS - WHETHER PUTATIVE CLASS MEMBERS WERE ENTITLED TO NOTICE OF DISCONTINUANCE OF THE ACTION UNDER CPLR 908 DESPITE THE FACT THAT THE TIME FOR THE INDIVIDUAL PLAINTIFF TO MOVE FOR CLASS CERTIFICATION HAD EXPIRED UNDER CPLR 902;

Supreme Court, New York County, denied plaintiff's cross motion to notify the putative class of the discontinuance of the action, pursuant to CPLR 908; App. Div. reversed and remanded to Supreme Court, New York County, to fashion an appropriate notification to the putative class under CPLR 908.

LOHNAS v LUZI:

4TH Dept. App. Div. order of 6/17/16; modification; leave to appeal granted by App. Div., 9/30/16;

LIMITATION OF ACTIONS - MEDICAL MALPRACTICE - ESTOPPEL TO PLEAD STATUTE OF LIMITATIONS - WHETHER AN ISSUE OF FACT EXISTED REGARDING APPLICATION OF THE CONTINUOUS TREATMENT DOCTRINE; WHETHER THE EQUITABLE ESTOPPEL DOCTRINE APPLIED TO TOLL THE STATUTE OF LIMITATIONS;

Supreme Court, Erie County, granted defendants' motion for leave to reargue and, upon reargument, denied defendants' motion for partial summary judgment; App. Div. modified by granting the motion for partial summary judgment in part and dismissing the complaint to the extent that the complaint, as amplified by the bill of particulars, asserts that defendants are equitably estopped from asserting as a defense the statute of limitations for medical malpractice and, as so modified, affirmed.

TOWN OF OYSTER BAY v BRUMMELL:

2ND Dept. App. Div. order of 7/26/16; denial of motion; sua sponte examination 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;

INJUNCTIONS - PRELIMINARY INJUNCTION - WHETHER PRELIMINARY INJUNCTION IS UNCONSTITUTIONAL AND BASED ON ERRONEOUS FACTUAL FINDINGS;

Supreme Court, Nassau County, granted a motion, pursuant to CPLR 6311, to preliminary enjoin appellant from commencing, filing or causing to be commenced or filed by any person, in any court, any action, proceeding, order to show cause or motion relating to Denton et al. v Town of Oyster Bay without leave of the court; App. Div. denied appellants' motion to vacate the preliminary injunction granted by Supreme Court, Nassau County.

SMITH (DWIGHT), PEOPLE v:

1ST Dept. App. Div. order of 8/25/16; reversal; leave to appeal granted by Kapnick, J., 9/29/16;

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL WAS INVALID - RIGHT TO COUNSEL - WHETHER THE DENIAL OF DEFENDANT'S REQUESTS FOR A LAWYER DURING PRETRIAL PROCEEDINGS CONCERNING A DNA TEST VIOLATED DEFENDANT'S RIGHT TO COUNSEL - WHETHER DISMISSAL OF THE INDICTMENT IS THE PROPER REMEDY FOR THE DEPRIVATION OF COUNSEL;

Supreme Court, Bronx County, convicted defendant, upon his guilty plea, of manslaughter in the first degree and burglary in the first degree, and imposed sentence; App. Div. reversed, vacated the plea and dismissed the indictment without prejudice to the People to represent any appropriate charges to another grand jury.