

COURT OF APPEALS NEW FILINGS

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

September 21, 2018 through September 27, 2018

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.

HE v TROON MANAGEMENT, et al.:

1ST Dept. App. Div. order of 1/23/18; reversal; leave to appeal granted by Court of Appeals, 9/13/18;

Negligence--Maintenance of Premises--Whether New York City Administrative Code § 2-710 imposes a nondelegable duty on out-of-possession landlord to keep sidewalk free of ice and snow; commercial lease assigned the duty to clear snow and ice to tenant;

Supreme Court, New York County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed and granted the motion.

HINTON v VILLAGE OF PULASKI:

4TH Dept. App. Div. order of 4/27/18; affirmance; leave to appeal granted by Court of Appeals, 9/6/18; Rule 500.11 review pending;

Municipal Corporations--Sidewalks--Prior Notice of Defective Condition--Whether Village defendant was entitled to prior written notice of defective condition because the stairway upon which plaintiff fell was the functional equivalent of a sidewalk; negligence; summary judgment;

Supreme Court, Oswego County, granted defendant's motion for summary judgment; App. Div. affirmed.

LUBONTY v U.S. BANK NATIONAL ASSOCIATION, &c.:

2ND Dept. App. Div. order of 3/28/18; affirmance; leave to appeal granted by Court of Appeals, 9/13/18;

Mortgages--Foreclosure--Whether six-year statute of limitations for defendant's foreclosure action was tolled pursuant to CPLR 204(a) because of plaintiff's two bankruptcy filings, which invoked the automatic stay under 11 USC § 362(a); limitation of actions; RPAPL 1501(4) action to cancel and discharge mortgage on real property;

Supreme Court, Suffolk County, granted defendant's motion pursuant to CPLR 3211(a)(7) to dismiss the complaint; App. Div. affirmed.

PLASTIC SURGERY GROUP, P.C., MATTER OF v COMPTROLLER OF THE STATE OF NEW YORK:

3RD Dept. App. Div. order of 11/22/17; reversal; leave to appeal granted by Court of Appeals, 9/13/18;

Disclosure--Medical Records and Reports--Whether CPLR 3122(a)(2), which generally requires that a subpoena requesting the production of a patient's medical records be accompanied by a written authorization by the patient, applies to a subpoena duces tecum served by the Comptroller during the course of an audit of a medical provider;

Supreme Court, Albany County, granted petitioner's application pursuant to CPLR 2304 to quash a subpoena duces tecum and denied respondent's cross motion to compel compliance; App. Div. reversed, denied the application to quash the subpoena, and granted the cross motion to compel compliance with the subpoena.

REGINA METROPOLITAN CO., LLC, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

1ST Dept. App. Div. order of 8/16/18, corrected 9/5/18; modification with dissents; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Landlord and Tenant--Rent--Whether method used by respondent New York State Division of Housing and Community Renewal (DHCR) to calculate rent overcharge for apartment, which looked beyond the four-year limitations period to determine base date rent, was arbitrary and capricious; landlord improperly deregulated apartment while receiving J-51 tax benefits; whether tenants were entitled to treble damages and attorneys' fees;

Supreme Court, New York County, (1) denied the CPLR article 78 petitions to modify a determination of respondent DHCR, dated 5/13/15, which affirmed an order of the rent administrator, dated 2/26/14, that calculated a base day rent by looking back more than four years from the rent overcharge complaint, and denied petitioner tenants' requests for treble damages and attorneys' fees; and (2) dismissed the proceedings; App. Div. modified by granting landlord's petition to the extent of remanding the matter to respondent DHCR to recalculate the base date rent by looking back to four years before the filing of the overcharge complaint, and otherwise affirmed.

RODRIGUEZ (ALEXIS), PEOPLE v.:

3RD Dept. App. Div. order of 8/9/18; affirmance with dissents: leave to appeal granted by Lynch, J., 8/30/18; Rule 500.11 review pending;

Crimes--Plea of Guilty--Withdrawal of Plea; sentence--concurrent and consecutive terms--whether the trial court erred in imposing consecutive sentences upon a finding that defendant violated the terms of the parties' cooperation agreement by refusing to testify for the prosecution concerning a home invasion incident preceding the incident leading to the murder conviction;

County Court, Schenectady County, convicted defendant, upon his guilty plea of the crime of assault in the first degree, and adjourned sentencing pending defendant's compliance with a compliance with a cooperation agreement and, thereafter, denied defendant's motion to, among other things, vacate his guilty plea, and sentenced him upon his conviction of assault in the first degree to 20 years in prison, followed by five years of postrelease supervision to run consecutively to his sentence on a related murder conviction; App. Div. affirmed.

SLOANE, MATTER OF v M.G.:

1ST Dept. App. Div. order of 8/16/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Incapacitated and Mentally Disabled Persons--Sustaining Life of Person in Permanent Vegetative State--claimed violation of equal protection guaranties in end-of-life decision making for person with developmental disability who had healthcare decision-making capacity until a late-life heart attack--hearing pursuant to Surrogate's Court Procedure Act (SCPA) 1750-b;

Supreme Court, New York County, among other things, after a hearing, granted petitioner's application for authorization to withdraw life-sustaining treatment from respondent, and denied Mental Hygiene Legal Service's objection to the decision of the guardian to withdraw life-sustaining treatment; App. Div. affirmed.

WALSH, MATTER OF v NEW YORK STATE COMPTROLLER et al.:

3RD Dept. App. Div. order of 5/31/18; confirmation; leave to appeal granted by Court of Appeals, 9/18/18;

Civil Service--Retirement and Pension Benefits--in CPLR article 78 proceeding challenging the denial of performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, whether substantial evidence supports the Comptroller's determination that petitioner failed to demonstrate that her injuries were the "natural and proximate result of [] an act of any inmate" within the meaning of section 607-c--injury occurring when inmate impaired by alcohol or drugs fell on petitioner correction officer--involuntary versus deliberate act by inmate;

App. Div. confirmed respondent Comptroller's determination denying petitioner's application for performance of duty disability retirement benefits, and dismissed the petition.