COURT OF APPEALS NEW FILINGS

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

November 18, 2016 through November 24, 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.

BAUMANN, et al. v LONG ISLAND POWER AUTHORITY, et al.:
2ND Dept. App. Div. order of 7/13/16; affirmance; leave to appeal granted by App. Div., 10/28/16;
PUBLIC AUTHORITIES - CLAIMS AGAINST PUBLIC AUTHORITIES - CLAIMS OF PROPERTY OWNERS AGAINST PROVIDERS OF ELECTRICAL TRANSMISSION FOR PROPERTY DAMAGE OCCURRING DURING STORM SURGE OF HURRICANE SANDY OVER ROCKAWAY PENINSULA; WHETHER DEFENDANTS WERE ENTITLED TO DISMISSAL OF COMPLAINT UNDER THE DOCTRINE OF GOVERNMENTAL FUNCTION IMMUNITY - GOVERNMENTAL VERSUS PROPRIETARY FUNCTIONS; DISMISSAL AND NONSUIT; NEGLIGENCE;

Supreme Court, Queens County, denied the joint motion of defendants Long Island Power Authority, Long Island Lighting Company and National Grid Electric Services LLC pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them; App. Div. affirmed.

CONNOLLY, et al. v LONG ISLAND POWER AUTHORITY, et al.:
2ND Dept. App. Div. order of 7/13/16; affirmance; leave to appeal granted by App. Div., 10/28/16;
PUBLIC AUTHORITIES - CLAIMS AGAINST PUBLIC AUTHORITIES - CLAIMS OF PROPERTY OWNERS AGAINST PROVIDERS OF ELECTRICAL TRANSMISSION FOR PROPERTY DAMAGE OCCURRING DURING STORM SURGE OF HURRICANE SANDY OVER ROCKAWAY PENINSULA; WHETHER DEFENDANTS WERE ENTITLED TO DISMISSAL OF COMPLAINT UNDER THE DOCTRINE OF GOVERNMENTAL FUNCTION IMMUNITY - GOVERNMENTAL VERSUS PROPRIETARY FUNCTIONS; DISMISSAL AND NONSUIT; NEGLIGENCE;
Supreme Court, Queens County, denied the joint motion of defendants Long Island Power Authority, Long Island Lighting Company and National Grid Electric Services LLC pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them; App. Div. affirmed.

FERNANDEZ, &c. v DAIMLERCHRYSLER, A.G., et al.:
2ND Dept. App. Div. order of 10/12/16; affirmance; 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;
CORPORATIONS - FOREIGN CORPORATIONS - PERSONAL JURISDICTION - WHETHER SUPREME COURT ERRED IN DISMISSING THE COMPLAINT AS AGAINST DEFENDANT DAIMLERCHRYSLER, A.G., A GERMAN CORPORATION, ON THE GROUND THAT THE COURT LACKED PERSONAL JURISDICTION OVER IT - TRANSACTION OF BUSINESS WITHIN THE STATE - WHETHER CAUSE OF ACTION ASSERTED AROSE FROM TRANSACTION WITHIN THE STATE - CPLR 301; ALLEGED "EXCEPTIONAL CIRCUMSTANCES" AND DUE PROCESS ISSUES;
Supreme Court, Rockland County, granted the motion of defendant DaimlerChrysler, A.G., pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it and, in effect, denied plaintiff's application to compel further discovery on the issue of jurisdiction and to sanction DaimlerChrysler, A.G. for its alleged failure to comply with certain discovery demands; App. Div. affirmed.

HEERAN, et al. v LONG ISLAND POWER AUTHORITY, et al.:
2nd Dept. App. Div. order of 7/13/16; affirmance; leave to appeal granted by App. Div., 10/28/16;

PUBLIC AUTHORITIES - CLAIMS AGAINST PUBLIC AUTHORITIES - CLAIMS OF PROPERTY OWNERS AGAINST PROVIDERS OF ELECTRICAL TRANSMISSION FOR PROPERTY DAMAGE OCCURRING DURING STORM SURGE OF HURRICANE SANDY OVER ROCKAWAY PENINSULA; WHETHER DEFENDANTS WERE ENTITLED TO DISMISSAL OF COMPLAINT UNDER THE DOCTRINE OF GOVERNMENTAL FUNCTION IMMUNITY - GOVERNMENTAL VERSUS PROPRIETARY FUNCTIONS; DISMISSAL AND NONSUIT; NEGLIGENCE;
Supreme Court, Queens County, denied the joint motion of defendants Long Island Power Authority, Long Island Lighting Company and National Grid Electric Services LLC (incorrectly sued as Keyspan Electric Services LLC) pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them; App. Div. affirmed.

ROBERTS (KERRI), PEOPLE v:
1ST Dept. App. Div. order of 4/7/16; modification; leave to appeal granted by Pigott, J., 11/1/16;
CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE - IDENTITY THEFT (PENAL LAW § 190.79 [3]) - WHETHER THERE WAS PROOF THAT DEFENDANT ASSUMED THE VICTIM'S IDENTITY IN ADDITION TO USING HER DRIVER'S LICENSE AND CREDIT CARD INFORMATION;
Supreme Court, New York County, upon a jury verdict, convicted defendant of two counts of criminal possession of a forged instrument in the second degree and identity theft in the second degree, and sentenced him, as a second felony offender, to an aggregate term of three to six years; App. Div. modified to the extent of vacating the identity theft conviction and dismissing that count of the indictment, and otherwise affirmed.