COURT OF APPEALS NEW FILINGS

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

November 25, 2016 through December 1, 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.

BROOKFORD, LLC, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, et al.:
1ST Dept. App. Div. order of 8/4/16; affirmance; leave to appeal granted by App. Div., 11/1/16; Rule 500.11 review pending; LANDLORD AND TENANT - RENT REGULATION - DENIAL OF LANDLORD'S APPLICATION TO DEREGULATE A RENT CONTROLLED APARTMENT - APPORTIONMENT OF INCOME REPORTED ON JOINT TAX RETURN FOR REMAINING SPOUSE AFTER HUSBAND VACATED APARTMENT AND ENTERED ASSISTED LIVING FACILITY;

Supreme Court, New York County, in a proceeding pursuant to CPLR article 78, denied the petition seeking annulment of an 11/19/14 order of respondent New York State Department of Housing and Community Renewal (DHCR) which affirmed, as modified, a prior DHCR order denying petitioner's application to deregulate a rent controlled apartment and dismissed the proceeding; App. Div. affirmed.

FARAGE, MATTER OF v LEWIS, &c., et al.:
2ND Dept. App. Div. judgment of 8/31/16; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - PROHIBITION - WHEN REMEDY AVAILABLE - CLAIMED FIRST, FIFTH AND FOURTEENTH AMENDMENT VIOLATIONS;
App. Div. (1) denied the petition pursuant to CPLR article 78 to compel certain Justices of Supreme Court, Kings County, to, among other things, vacate certain orders issued by them, and to prohibit those Justices from issuing any further orders in connection with certain underlying actions; and (2) dismissed the proceeding.

FORMAN v HENKIN:
1ST Dept. App. Div. order of 12/22/15; modification with dissents; leave to appeal granted by App. Div., 10/20/16;
DISCLOSURE - DISCOVERY AND INSPECTION - SCOPE OF DISCLOSURE - SOCIAL MEDIA - WHETHER A PERSONAL INJURY PLAINTIFF MAY BE COMPELLED TO PRODUCE PHOTOGRAPHS PRIVATELY POSTED ON FACEBOOK AND AUTHORIZATIONS RELATED TO PLAINTIFF'S PRIVATE FACEBOOK MESSAGES;
Supreme Court, New York County, among other things, granted defendant's motion to compel to the extent of directing plaintiff to produce all photographs of plaintiff privately posted on Facebook prior to the accident at issue that she intends to introduce at trial, all photographs of plaintiff privately posted on Facebook after the accident that do not show nudity or romantic encounters, and authorizations for defendant to obtain records from Facebook showing each time plaintiff posted a private message after the accident and the number of characters or words in those messages; App. Div. modified to vacate those portions of the order directing plaintiff to produce photographs of herself posted to Facebook after the accident that she does not intend to introduce at trial, and authorizations related to plaintiff's private Facebook messages, and otherwise affirmed.

GIRARD, MATTER OF v ANNUCCI:
3RD Dept. App. Div. judgment of 7/28/16; modification; sua sponte examination whether the judgment appealed from finally determines the proceeding within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other basis exists for an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO REMAINING CHARGES OF VIOLATION OF PRISON DISCIPLINARY RULES; CLAIMED DUE PROCESS VIOLATIONS;
Supreme Court, Albany County, transferred the proceeding to the App. Div.; App. Div. modified by annulling so much of respondent's determination as found petitioner guilty of violent conduct as charged in the second misbehavior report and imposed a penalty; granted the petition to that extent; directed respondent to expunge all references to this charge from petitioner's institutional record; remitted the matter to respondent for an administrative redetermination of the penalty on the remaining violations; and, as so modified, confirmed the determination.

PEGUERO-SANCHEZ (JULIO), PEOPLE v:
2ND Dept. App. Div. order of 7/13/16; modification; leave to appeal granted by Austin, J., 10/17/16; Rule 500.11 review pending;
CRIMES - PROOF OF OTHER CRIMES - WHETHER TRIAL COURT ERRED IN ADMITTING EVIDENCE OF UNCHARGED CRIMES - REFERENCE TO UNCHARGED CRIMES IN PEOPLE'S CLOSING STATEMENT; ADMISSION OF EVIDENCE FROM PROSECUTION WITNESS THAT DEFENDANT INVOKED HIS RIGHT TO REMAIN SILENT AND RIGHT TO COUNSEL POST-ARREST; SUPPRESSION OF EVIDENCE - WHETHER THE TRIAL COURT ERRED IN FAILING TO SUPPRESS TANGIBLE EVIDENCE FOUND IN DEFENDANT'S CAR;
Supreme Court, Suffolk County, upon a jury verdict, convicted defendant of criminal possession of a controlled substance in the first degree and two counts of improper equipment of a vehicle (Vehicle and Traffic Law § 375[2][a][4]; [10][a]), and imposed sentence; App. Div. modified by vacating the conviction of improper equipment of a vehicle under count two of the indictment, and the sentence imposed thereon, and dismissing that count of the indictment; and, as so modified, affirmed.

SPOSITO (JOSEPH), PEOPLE v:
3RD Dept. App. Div. order of 6/9/16; reversal; leave to appeal granted by Pigott, J., 11/10/16;
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - TRIAL COUNSEL'S WAIVER OF A HUNTLEY HEARING, RESULTING IN THE ADMISSION AT TRIAL OF A HIGHLY PREJUDICIAL VIDEOTAPED STATEMENT; DNA TESTING - POST-CONVICTION RELIEF - WHETHER COUNTY COURT PROPERLY DENIED DEFENDANT'S MOTION FOR DNA TESTING;
County Court, Albany County, convicted defendant, upon a jury verdict, of rape in the first degree and criminal sexual act in the first degree; County Court then denied defendant's CPL 440.30 (1-a) motion for the performance of forensic DNA testing on specified evidence; and, without a hearing, denied defendant's CPL 440.10 motion to vacate the judgment of conviction; App. Div. affirmed.

TRIMBLE v STATE OF NEW YORK:
3RD Dept. App. Div. order of 9/29/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
COURTS - COURT OF CLAIMS - DISMISSAL OF CLAIM - FAILURE TO SERVE ATTORNEY GENERAL AS REQUIRED BY COURT OF CLAIMS ACT § 11(a); Court of Claims sua sponte dismissed the claim; App. Div. affirmed.

WORD, PEOPLE ex rel. v STATE OF NEW YORK, et al.:
Order of Smith, Nancy E., J. of the 4th Dept. App. Div., dated 10/31/16; denial of motion to renew; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right and whether there is any basis for an appeal as of right from an order of a single Appellate Division Justice;
HABEAS CORPUS - AVAILABILITY OF RELIEF - RENEWAL OF APPLICATION; App. Div. Justice denied petitioner's motion to renew her application for a writ of habeas corpus and other relief.