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COURT OF APPEALS NEW FILINGS

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

December 2, 2016 through December 8, 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.

ABDUR-RASHID, MATTER OF v NEW YORK CITY POLICE DEPARTMENT, et al. (AND ANOTHER PROCEEDING):
1ST Dept. App. Div. order of 6/2/16; affirmance in one proceeding and reversal in the other; leave to appeal granted by Court of Appeals, 11/21/16;
PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CPLR ARTICLE 8 PROCEEDINGS TO COMPEL RESPONDENTS NEW YORK CITY POLICE DEPARTMENT (NYPD) AND NYPD COMMISSIONER KELLY TO DISCLOSE DOCUMENTS REQUESTED BY PETITIONERS PURSUANT TO FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW § 84 ET SEQ.) - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE NYPD MAY INVOKE THE FEDERAL GLOMAR DOCTRINE (PERMITTING AGENCIES TO NEITHER CONFIRM NOR DENY THE EXISTENCE OF RECORDS SOUGHT) WHEN RESPONDING TO A FOIL REQUEST - FOIL ACTIVITIES AND INVESTIGATIONS INVOLVING PETITIONERS AND THEIR ASSOCIATED ORGANIZATIONS;

Supreme Court, New York County, in one proceeding, denied the CPLR article 78 petition seeking to compel respondents NYPD and NYPD Commissioner Kelly to disclose documents requested by petitioner Abdur-Rashid pursuant to FOIL, and granted respondents' motion to dismiss the proceeding (9/25/14 judgment); and in the other proceeding, denied respondents' motion to dismiss the petition brought pursuant to CPLR article 78 seeking to compel respondents to disclose documents requested by petitioner Hashmi pursuant to FOIL, and ordered respondents to submit an answer to the petition (11/17/14 order); App. Div. (1) affirmed the 9/25/14 judgment, and (2) and reversed the 11/17/14 order, granted the motion to dismiss, vacated the order to submit an answer, and directed the Clerk to enter judgment dismissing the proceeding brought by petitioner Hashmi.

ALAMIN, MATTER OF v DOWN TOWN TAXI, INC., et al.:
3RD Dept. App. Div. order of 7/21/16; dismissal; 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;
WORKERS' COMPENSATION - DISABILITY BENEFITS - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING CLAIMANT'S APPEAL FROM THE DECISION OF A WORKERS' COMPENSATION LAW JUDGE, AND DISMISSING AS UNTIMELY CLAIMANT'S APPEAL FROM THE 1/3/14 DECISION OF THE WORKERS' COMPENSATION BOARD - WHETHER THE APPELLATE DIVISION'S DENIAL OF RECONSIDERATION AND/OR FULL BOARD REVIEW WAS ARBITRARY OR CAPRICIOUS OR OTHERWISE CONSTITUTED AN ABUSE OF DISCRETION; CLAIMED DUE PROCESS VIOLATIONS;
App. Div. dismissed appeals from the 1/11/13 decision of a Workers' Compensation Law Judge awarding claimant certain workers' compensation benefits from 2/11/08 to 10/26/09, and the 1/3/14 decision of the Workers' Compensation Board ruling that claimant had no further causally related disability after 11/20/08, and affirmed the 3/28/14 Workers' Compensation Board decision which denied claimant's request for reconsideration and/or full Board review.

BROWN v STATE OF NEW YORK (CLAIM #110037):
4th Dept. App. Div. order of 11/10/16, bringing up for review 4th Dept. App. Div. order of 12/30/10; modification with dissents;
NEGLIGENCE - PROXIMATE CAUSE - HIGHWAY ACCIDENT AT AN INTERSECTION FOR WHICH THE STATE HAD FAILED TO COMPLETE A TRAFFIC STUDY AND UPGRADE TRAFFIC CONTROL OR WARNING DEVICES - STANDARD APPLICABLE TO DETERMINATION OF WHETHER STATE'S ACTION OR INACTION WAS A PROXIMATE CAUSE OF THE INJURIES SUSTAINED;

Court of claims dismissed the claim for personal injury; App. Div. modified by granting that part of the post-trial motion with respect to the issue of proximate cause and, as so modified, affirmed, and remitted the matter to the Court of Claims for a determination on the issue of proximate cause; thereafter, the Court of Claims, among other things, awarded claimant the principal sum of $2,498,388.47 against the State of New York; App. Div. affirmed.

BROWN, AS ADMINISTRATRIX v STATE OF NEW YORK (CLAIM #108961):
4th Dept. App. Div. order of 11/10/16, bringing up for review 4th Dept. App. Div. order of 12/30/10;; modification with dissents;
NEGLIGENCE - PROXIMATE CAUSE - HIGHWAY ACCIDENT AT AN INTERSECTION FOR WHICH THE STATE HAD FAILED TO COMPLETE A TRAFFIC STUDY AND UPGRADE TRAFFIC CONTROL OR WARNING DEVICES - STANDARD APPLICABLE TO DETERMINATION OF WHETHER STATE'S ACTION OR INACTION WAS A PROXIMATE CAUSE OF THE INJURIES SUSTAINED;
Court of Claims dismissed the claim for wrongful death; App. Div. modified by granting that part of the post-trial motion with respect to the issue of proximate cause and, as so modified, affirmed, and remitted the matter to the Court of Claims for a determination on the issue of proximate cause; Court of Claims, among other things, awarded claimant the principal sum of $2,252,142.09 against the State of New York; App. Div. affirmed.

MANKO v GABAY, et al.:
2ND App. Div. orders of 3/21/16, 8/9/16 and 10/11/16; dismissals; sua sponte examination whether the orders appealed from finally determine 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 - APPELLATE DIVISION - DISMISSAL OF APPEALS;
App. Div., among other things, dismissed appeals from orders and an amended order of Supreme Court, Kings County, on the ground that the right of appeal therefrom terminated upon entry of a judgment, and ordered that the issues concerning the orders may be raised in connection with the appeal from the judgment; App. Div. thereafter, among other things, granted the branches of respondents' motions which were to dismiss the appeal to the extent that appellant's appendix and brief were stricken, and on or before 9/23/16 appellant shall serve and file a replacement appendix; App. Div. thereafter dismissed appeals from the 2/23/15 order and the 7/29/15 judgment of Supreme Court, Kings County, denied the branch of the motion by respondents Broome and Bernard H. Broome, PLLC which was to impose a sanction on appellant and for an award of an attorney's fee and otherwise denied the motion as academic; denied the branch of appellant's motion which was to waive the motion filing fee as unnecessary, and otherwise denied appellant's motion.

PARAMOUNT PICTURES CORPORATION v ALLIANZ RISK TRANSFER AG, et al.:
1ST Dept. App. Div. order of 7/21/16; reversal; leave to appeal granted by Court of Appeals, 11/22/16;
JUDGMENTS - RES JUDICATA - APPLICATION OF FEDERAL RULE OF CIVIL PROCEDURE 13(a) TO NEW YORK STATE COURT CASES; WHETHER A PARTY'S FAILURE TO ASSERT A COMPULSORY COUNTERCLAIM IN A PRIOR FEDERAL ACTION PRECLUDED THE PARTY FROM PURSUING THE COUNTERCLAIM IN A SUBSEQUENT STATE COURT ACTION UNDER THE DOCTRINE OF RES JUDICATA;
Supreme Court, New York County, denied defendants' motion to dismiss the complaint; App. Div. reversed and granted the motion to dismiss the complaint.

RICHARDS, MATTER OF v NEW YORK STATE DIVISION OF PAROLE:
3RD Dept. App. Div. order of 11/3/16; denial of motion; 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;
PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING CHALLENGING DENIAL OF APPLICATION FOR PAROLE RELEASE; APPELLATE DIVISION - DENIAL OF MOTION TO CERTIFY QUESTIONS OF LAW; HABEAS CORPUS - AVAILABILITY OF RELIEF; CLAIMED DUE PROCESS VIOLATIONS;
Supreme Court, Albany County, dismissed the petition challenging the denial of petitioner's application for parole release and declaratory relief; App. Div. denied appellant's motion to certify questions of law.

WEST MIDTOWN MANAGEMENT GROUP, INC., MATTER OF v STATE OF NEW YORK &c.:
1ST Dept. App. Div. order of 9/22/16; reversal with dissents;
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78 PROCEEDING SEEKING A JUDGMENT DECLARING WHAT SUM THE OFFICE OF MEDICAID INSPECTOR GENERAL IS ENTITLED TO SEEK AS REPAYMENT UNDER A FINAL AUDIT REPORT - MEDICAID REIMBURSEMENT OVERPAYMENT LIABILITY;
Supreme Court, New York County, denied the CPLR article 78 petition seeking, among other things, a judgment declaring that the principal sum to which respondent is entitled to seek repayment from petitioner under the Final Audit Report (FAR) dated 6/16/10, is no more than $1,460,914, and dismissed the proceeding; App. Div. reversed, granted the petition and declared that the principal sum that respondent is entitled to recover from petitioner pursuant to the FAR is $1,460,914.