

COURT OF APPEALS NEW FILINGS

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

December 6, through December 12, 2019

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.

BASKIN v MABCO TRANSIT, INC., et al.:

3RD Dept. App. Div. order of 10/31/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Liens--Validity--Whether defendant, owner of self-service storage facility, substantially complied with Lien Law § 182(7) by mailing notices to occupant at address occupant provided to postal service; Constitutional Law--State Constitutional Law--Whether defendant's private sale of goods undertaken pursuant to a possessory lien without actual notice to plaintiff deprived plaintiff of right to due process; Consumer Protection--Deceptive Acts and Practices--Whether plaintiff stated a cause of action alleging a violation of General Business Law § 349;** Supreme Court, Albany County, among other things, granted cross motions by defendants Mabco Transit, Inc. and Gregory Baumgartner for summary judgment dismissing the complaint against them; App. Div. affirmed.

EPAKCHI (DARIA, N.), PEOPLE v:

App. Term, 9th and 10th Judicial Districts of 6/6/19; reversal; leave to appeal granted by DiFiore, Ch.J., 11/27/19;

Crimes--Accusatory Instrument--Whether a simplified traffic information may be re-filed after another simplified traffic information alleging the same offense was dismissed for failure to timely provide a supporting deposition;

District Court of Suffolk County, Suffolk County Traffic and Parking Violations Agency, convicted defendant of failing to stop at a stop sign; App. Term reversed, vacated order denying defendant's motion to dismiss the simplified traffic information, granted defendant's motion, and dismissed the simplified traffic information.

PETTUS, MATTER OF v BOARD OF DIRECTORS (INDEX NOS. 251751-14; 251413-14; 250720-15):

1ST Dept. App. Div. order of 11/7/19; denial of motions; sua sponte examination of 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;

Motions and orders;

App. Div. (1) denied petitioner's motions for various relief; (2) granted respondents' cross motions to the extent of imposing sanctions; (3) imposed a litigation injunction; and (4) denied without prejudice to renew that branch of the cross motions which seek to hold petitioner in contempt.

CITY OF ONEONTA v PERVU et al.:

Supreme Court, Otsego County, order of 10/16/19; sua sponte examination of whether a direct appeal lies as of right;

Motions and Orders--Order to show cause;

Supreme Court granted City's order to show cause; ordered that apartments shall not be occupied until the City grants a certificate of compliance regarding code violations at the property; ordered respondents to immediately post a bond in the amount of \$25,000; ordered that respondents shall pay costs for this proceeding and its enforcement as authorized by statute and the City Municipal Code and that the same be made a lien against the premises; and ordered that if the parties cannot agree regarding the amount of costs, including attorney fees to date, either party may apply to the Court for a hearing on that issue.

YOUNGJOHN, MATTER OF THE ESTATE v BERRY PLASTICS
CORPORATION et al.:

3RD Dept. App. Div. order of 2/21/19; modification; leave to appeal granted by Court of Appeals, 11/21/19;

Workers' Compensation--Award--Whether 2009 amendments to Workers' Compensation Law authorizing full payment of Schedule Loss Use (SLU) awards in one lump sum at the request of the injured employee altered rule that where injured employee dies without leaving a surviving spouse, child under 18 years old, or dependent, only that portion of claimant's SLU award that had accrued at the time of death is payable to claimant's estate, along with reasonable funeral expenses.;
Workers' Compensation Board, among other things, limited the amount of decedent's schedule loss of use award payable to claimant to funeral expenses not to exceed \$10,500; App. Div. modified, by reversing so much of the decision as limited the schedule loss of use award payable to claimant to reasonable funeral expenses; remitted the matter to Workers' Compensation Board for further proceedings not inconsistent with the court's decision; and as so modified, affirmed.