

COURT OF APPEALS NEW FILINGS

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

November 24, 2017 through November 30, 2017

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.

ANDREW CAROTHERS, M.D., P.C., &c. v PROGRESSIVE INSURANCE COMPANY, et al.:

2nd Dept. App. Div. order of 4/5/17; affirmance; leave to appeal granted by App. Div., 10/27/17;

Insurance--No-Fault Automobile Insurance--Payment withheld by insurance carrier for medical services provided by a professional corporation which has been "fraudulently incorporated" to allow nonphysicians to share in its ownership and control--elements necessary to establish the defense of fraudulent incorporation recognized in State Farm Mut. Auto. Ins. Co. v Mallela (4 NY3d 313 [2005]); jury instructions--adverse inference--nonparties' invocation of Fifth Amendment privilege against self-incrimination;

Civil Court of the City of New York, Richmond County, upon a jury verdict, found in favor of defendant and against plaintiff, dismissing the complaint; App. Term affirmed; App. Div. affirmed.

KELLER-GOLDMAN v GOLDMAN:

1ST Dept. App. Div. order of 4/6/17; affirmance with dissents;

Rule 500.11 review pending;

Family, Parent and Child--Support--Whether the father's credit against child support obligations, while he is paying for a particular child's room and board at an educational institution, is subject to a cap--interpretation of parties' Stipulation of Settlement and Agreement;

Supreme Court, New York County, adhered to its earlier order (8/19/15) which granted plaintiff's motion to the extent of interpreting the parties' Stipulation of Settlement and Agreement as providing a cap on defendant's credit against his child support obligations; App. Div. affirmed.

RODRIGUEZ (WILLIAM), PEOPLE v:

1ST Dept. App. Div. order of 7/25/17; affirmance with dissents; leave to appeal granted by Acosta, P.J., 11/2/17; Rule 500.11 review pending;

Crimes--Right of Confrontation--Whether defendant was deprived of his right of confrontation by the introduction into evidence at trial of laboratory reports of DNA testing linking him to the crime based solely upon the testimony of a witness who was not one of the analysts who performed, witnessed or supervised the testing; right to counsel--effective representation--whether defense counsel's failure to object, on confrontation clause grounds, to the admission of evidence relating to DNA test results constituted ineffective assistance of counsel;

Supreme Court, New York County (5/20/14 amended judgment), convicted defendant, upon his guilty plea, of five counts of burglary in the first degree, five counts of robbery in the first degree, two counts of robbery in the second degree, six counts of kidnapping in the second degree, and two counts of endangering the welfare of a child; Supreme Court (3/19/14 judgment) convicted defendant, upon a jury verdict, of burglary in the second degree; App. Div. affirmed both judgments.

T-MOBILE NORTHEAST, LLC, MATTER OF v DeBELLIS, &c., et al.:

2ND Dept. App. Div. order of 10/26/16; affirmance; leave to appeal granted by Court of Appeals, 11/20/17;

Taxation--Real Property Tax--Whether cellular telephone equipment housed on rooftops in petitioner's service area are taxable real property under RPTL 102(12)(i) or RPTL 102(12)(b); whether application of RPTL 102(12)(i) to certain components of petitioner's cellular telephone equipment violates petitioner's right to equal protection;

Supreme Court, Westchester County, denied the petition and dismissed the proceeding; App. Div. affirmed.

WATTS (RODNEY), PEOPLE v:

1ST Dept. App. Div. order of 3/23/17; affirmance; leave to appeal granted by Wilson, J., 10/6/17;

Crimes--Forgery--Whether the crime of criminal possession of a forged instrument in the second degree, as defined by Penal Law § 170.10, encompasses the sale of counterfeit concert and sporting event tickets;

Supreme Court, New York County, convicted defendant, upon his guilty plea, of two counts of criminal possession of a forged instrument in the second degree, and sentenced him, as a second felony offender, to concurrent terms of 2 1/2 to 5 years; App. Div. affirmed.