

COURT OF APPEALS NEW FILINGS

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

October 4, 2013 through October 10, 2013

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.

BHUGRA v MASSACHUSETTS CASUALTY INSURANCE COMPANY, et al.:
1ST Dept. App. Div. order of 4/30/13; 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;
APPEAL - LAW OF THE CASE - DENIAL OF MOTION FOR A DEFAULT JUDGMENT - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT ITS PRIOR DETERMINATION, THAT CERTAIN DEFENDANTS TIMELY SERVED THEIR ANSWER IN ACCORDANCE WITH THE PARTIES' WRITTEN STIPULATION AND WERE NEVER IN DEFAULT, FORECLOSES REEXAMINATION OF THE QUESTION OF DEFAULT ON THIS APPEAL;

Supreme Court, New York County, denied plaintiff's motion for a default judgment against defendants Massachusetts Casualty Insurance Company, Centre Life Insurance Company, Centre Solutions, and Zurich American Insurance Company; App. Div. affirmed.

GRACE v LAW, et al.:

4TH Dept. App. Div. order of 7/19/13; affirmance; leave to appeal granted by App. Div., 9/27/13;
ATTORNEY AND CLIENT - MALPRACTICE - WHETHER PLAINTIFF WAIVED HIS LEGAL MALPRACTICE CLAIM BY VOLUNTARILY DISCONTINUING THE UNDERLYING MEDICAL MALPRACTICE CASE AFTER MOST CLAIMS HAD BEEN DISMISSED, INCLUDING THOSE AGAINST THE TREATING PHYSICIAN, AND NO APPEAL WAS TAKEN; SUMMARY JUDGMENT - EVIDENTIARY STANDARD;
Supreme Court, Erie County, denied the motion of defendants Robert L. Brenna, Jr. and Brenna, Brenna & Boyce, PLLC for summary judgment and denied that part of the cross motion of defendants Michael R. Law and Philips Lytle, LLP seeking summary judgment; App. Div. affirmed.

LEBRON v SML VETERAN LEATHER, LLC:

1ST Dept. App. Div. order of 8/20/13; reversal with dissents;
Rule 500.11 review pending;
STATUTES - CONSTRUCTION - OUT-OF-STATE-STATUTE - NEW JERSEY WORKERS' COMPENSATION LAW - APPLICATION OF STATUTORY EXCEPTION FOR EMPLOYER'S CONDUCT AMOUNTING TO AN "INTENTIONAL WRONG";
Supreme Court, Bronx County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendant's motion for summary judgment dismissing the complaint, and directed the clerk to enter judgment accordingly.

LIAO, PEOPLE ex rel. v CUOMO, et al.:

3RD Dept. App. Div. order of 8/15/13; denial of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
HABEAS CORPUS - AVAILABILITY OF RELIEF; PRISONERS TRANSFERRED TO OTHER STATES - INTERSTATE AGREEMENT ON DETAINERS ACT;
App. Div., among other things, denied petitioner's application for a writ of habeas corpus.

NICOMETI v VINEYARDS OF FREDONIA, LLC et al. (AND A THIRD-PARTY ACTION):

4TH Dept. App. Div. order of 6/14/13; modification with dissents; leave to appeal granted by App. Div., 9/27/13; Rule 500.11 review pending;
NEGLIGENCE - PROXIMATE CAUSE - PLAINTIFF INJURED WHEN HIS STILTS SLIPPED ON ICE WHILE HE WAS INSTALLING CEILING INSULATION AT A CONSTRUCTION SITE - WHETHER THERE IS A TRIABLE ISSUE OF FACT WHETHER PLAINTIFF'S ACTIONS WERE THE SOLE PROXIMATE CAUSE OF HIS INJURIES; LABOR LAW § 240; SUMMARY JUDGMENT;

Supreme Court, Erie County, granted plaintiff's motion for partial summary judgment on the issue of liability against all defendants except Whitney and Pfohl individually, dismissed the action as against those two defendants, and in effect denied the cross motion of defendant Winter-Pfohl, Inc. for partial summary judgment dismissing plaintiff's Labor Law § 240(1) claim against it; App. Div. modified by denying plaintiff's motion, and affirmed as modified.

POLLACK & C., MATTER OF:

2ND Dept. App. Div. orders of 8/14/13; sua sponte examination whether the App. Div. orders appealed from that denied appellant's motions finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER DISBARRING ATTORNEY AND ORDERS DENYING ATTORNEY'S VARIOUS MOTIONS;

App. Div. granted Grievance Committee's motion to confirm a Special Referee's report, which sustained two charges of professional misconduct, and disbarred attorney; denied attorney's motion to stay the disciplinary proceeding; denied attorney's motion for an extension of time to respond to the Report of the Special Referee; denied attorney's motion, in effect, to vacate so much of a decision and order of the App. Div., dated 6/23/09, as immediately suspended her from the practice of law pursuant to Judiciary Law § 90(4)(f), as a result of her conviction of a serious crime, and authorized the Grievance Committee for the Tenth Judicial District to institute and prosecute a disciplinary proceeding against her; and denied as academic attorney's motion to compel the production of certain documents.

SUE/PERIOR CONCRETE & PLUMBING, INC. v LEWISTON GOLF COURSE CORP., et al.:

4TH Dept. App. Div. order of 6/14/13; modification; leave to appeal granted by App. Div., 9/27/13;

NATIVE AMERICANS - SOVEREIGN IMMUNITY OF TRIBE - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT DEFENDANT LEWISTON GOLF COURSE CORPORATION WAS NOT ENTITLED TO SOVEREIGN IMMUNITY UPON THE GROUND THAT IT WAS NOT AN "ARM OF THE TRIBE," EVEN THOUGH IT WAS A CORPORATE ENTITY FORMED UNDER THE LAWS OF THE SENECA NATION OF INDIANS; FRAUD - WHETHER PLAINTIFF'S FRAUD CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED AS DUPLICATIVE OF ITS BREACH OF CONTRACT CAUSE OF ACTION;

Supreme Court, Niagara County, denied defendants' motion to dismiss the first amended complaint; App. Div. modified by granting defendants' motion in part and dismissing the third cause of action and affirmed the order as modified.

VEGA v 103 THAYER STREET, LLC, et al.:

1ST Dept. App. Div. order of 4/2/13; reversal with dissent; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - SIDEWALKS - PRIOR NOTICE OF DEFECTIVE CONDITION - TRIP AND FALL RESULTING FROM A HOLE IN A PEDESTRIAN RAMP - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE MARKINGS ON THE MAP BY THE BIG APPLE POTHOLE AND SIDEWALK PROTECTION CORPORATION, WHICH THE CITY SUBMITTED IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT, RAISED AN ISSUE OF FACT AS TO WHETHER THE CITY HAD PRIOR WRITTEN NOTICE OF THE DEFECT AT ISSUE; Supreme Court, New York County, granted defendant City of New York's cross motion for summary judgment dismissing the complaint and, upon reargument, adhered to its original determination; App. Div. reversed and denied the City's motion for summary judgment.