

COURT OF APPEALS NEW FILINGS

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

September 28, 2012 through October 4, 2012

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.

DEACON (DERRICK), PEOPLE v:

2ND Dept. App. Div. order of 6/20/12; modification; leave to appeal granted by Graffeo, J., 9/21/12;

CRIMES - VACATUR OF JUDGMENT OF CONVICTION - CPL 440.10 MOTION TO VACATE JUDGMENT BASED ON NEWLY DISCOVERY EVIDENCE OR ACTUAL INNOCENCE; PROFFERED EVIDENCE OF CONFESSION TO CRIME BY ANOTHER PERSON - STATEMENT AGAINST PENAL INTEREST; RECANTED TESTIMONY OF AN EYEWITNESS;

Supreme Court, Kings County, after a hearing, denied defendant's CPL 440.10 motion to vacate a 1/12/90 judgment convicting him, upon a jury verdict, of two counts of murder in the second degree, robbery in the first degree, and criminal possession of a weapon in the second degree, and for a new trial; App. Div.

modified by deleting the provision denying that branch of defendant's CPL 440.10 motion to vacate the judgment of conviction on the ground of newly discovered evidence and for a new trial and substituting therefor a provision granting that branch of the motion, vacated the judgment and ordered a new trial.

FISCHER, et al., MATTER OF v NEW YORK STATE BOARD OF ELECTIONS, et al.:

2ND Dept. App. Div. order of 9/24/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ELECTIONS - DESIGNATING PETITIONS - PROCEEDING PURSUANT TO ELECTION LAW § 16-102 TO VALIDATE PETITIONS PURPORTING TO DESIGNATE PETITIONERS AS CANDIDATES IN THE 9/13/12 PRIMARY ELECTION FOR THE NOMINATION OF THE DEMOCRATIC PARTY AS CANDIDATES FOR THE PUBLIC OFFICES OF TRUSTEES OF THE LONG ISLAND POWER AUTHORITY; Supreme Court, Suffolk County, granted respondents' motions to dismiss the petition for failure to state a cause of action and dismissed the petition; App. Div. affirmed.

GLYNN (JOHN G.), PEOPLE v:

4TH Dept. App. Div. order of 3/23/12; affirmance; leave to appeal granted by Lippman, Ch.J., 7/30/12; CRIMES - JUDGES - RECUSAL - JUDGE'S PREVIOUS REPRESENTATION OF DEFENDANT IN AN UNRELATED MATTER AND PREVIOUS PROSECUTION OF DEFENDANT AS AN ASSISTANT DISTRICT ATTORNEY; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL; SUFFICIENCY OF THE EVIDENCE; SENTENCE; Oswego County Court convicted defendant, upon a jury verdict, of criminal possession of marijuana in the second degree, criminal sale of marijuana in the second degree, criminal possession of marijuana in the fourth degree and criminal sale of marijuana in the fourth degree; App. Div. affirmed.

GREATER NEW YORK TAXI ASSOCIATION et al. v STATE OF NEW YORK, et al.:

Supreme Court, New York County judgment of 9/12/12; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2); CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER CHAPTER 602 OF THE LAWS OF 2011, AS AMENDED BY CHAPTER 9 OF THE LAWS OF 2012 (THE "STREET HAIL LIVERY LAW"), VIOLATES THE HOME RULE CLAUSE OR OTHER PROVISIONS OF THE NEW YORK STATE CONSTITUTION; Supreme Court granted plaintiffs summary judgment on their first and second causes of action; granted defendants summary judgment on plaintiffs' third and fourth causes of action; denied plaintiffs' requests for injunctive relief; declared that the Street Hail Livery Law violates the Home Rule Clause of the New York State Constitution; declared the entire Street Hail Livery Law null and void and unconstitutional, and dismissed plaintiffs' request for attorneys' fees.

METROPOLITAN TAXICAB BOARD OF TRADE, et al. v BLOOMBERG, et al.:
Supreme Court, New York County judgment of 9/12/12; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2);

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER CHAPTER 602 OF THE LAWS OF 2011, AS AMENDED BY CHAPTER 9 OF THE LAWS OF 2012 (THE "STREET HAIL LIVERY LAW"), VIOLATES THE HOME RULE CLAUSE OR OTHER PROVISIONS OF THE NEW YORK STATE CONSTITUTION;

Supreme Court granted plaintiffs summary judgment on all claims, denied defendants' motion for summary judgment, denied plaintiffs' requests for injunctive relief; declared that the Street Hail Livery Law violates the Home Rule Clause and other clauses of the New York State Constitution; declared the entire Street Hail Livery Law null and void and unconstitutional; and dismissed plaintiffs' request for attorneys' fees.

MURPHY, MATTER OF v NEW YORK STATE DIVISION OF HOUSING and COMMUNITY RENEWAL, et al.:

2ND Dept. App. Div. order of 1/12/12; affirmance; leave to appeal granted by Court of Appeals, 9/13/12;

LANDLORD AND TENANT - RENT REGULATION - SUCCESSION RIGHTS OF FAMILY MEMBERS RESIDING IN MITCHELL-LAMA HOUSING - EXCEPTION TO THE ANNUAL INCOME AFFIDAVIT REQUIREMENT - LIMITED-PROFIT HOUSING COMPANIES ACT AND PRIVATE HOUSING FINANCE LAW;

Supreme Court, New York County, among other things, granted the CPLR article 78 petition to annul the agency respondent's 10/13/09 determination denying petitioner's appeal from respondent housing company's rejection of his application for succession rights to an apartment, and declared petitioner entitled to succession rights; App. Div. affirmed.

SCHRON, et al. v TROUTMAN SAUNDERS LLP, et al. (AND ANOTHER ACTION):

1ST Dept. App. Div. order of 5/22/12; affirmance; leave to appeal granted by Court of Appeals, 9/11/12;

CONTRACTS - PAROL EVIDENCE RULE - WHETHER PAROL EVIDENCE WAS PROPERLY DISALLOWED IN SUPPORT OF A CLAIM THAT AN OPTION CONTRACT ALLOWING DEFENDANT CAMMEBY'S EQUITY HOLDINGS LLC TO PURCHASE PLAINTIFF SVCare FOR A FIXED SUM WAS VOID FOR LACK OF CONSIDERATION;

Supreme Court, New York County, granted Cammeby's Equity Holdings LLC's motion to exclude parol evidence of whether a loan was a condition precedent to the validity of its option to purchase the bulk of SVCare Holdings LLC (in Schron v Grunstein action), and to dismiss the cause of action for a declaration that the option is void (in Mich II Holdings LLC v Schron action); App. Div. affirmed.

TAXICAB SERVICE ASSOCIATION, et al. v STATE OF NEW YORK, et al.:

Supreme Court, New York County judgment of 9/7/12; sua sponte examination whether a direct appeal lies pursuant to CPLR

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER CHAPTER 602 OF THE LAWS OF 2011, AS AMENDED BY CHAPTER 9 OF THE LAWS OF 2012 (THE "STREET HAIL LIVERY LAW"), VIOLATES THE HOME RULE CLAUSE OR OTHER PROVISIONS OF THE NEW YORK STATE CONSTITUTION;

Supreme Court granted plaintiffs summary judgment on their first cause of action; granted defendants summary judgment on plaintiff's second, third, fourth and fifth causes of action; denied plaintiffs' requests for injunctive relief; declared that the Street Hail Livery Law violates the Home Rule Clause of the New York State Constitution; declared the entire Street Hail Livery Law null and void and unconstitutional; and dismissed plaintiffs' request for attorneys' fees.

WELCH, MATTER OF v HANNIGAN, et al.:

4th Dept. App. Div. order of 8/3/12; sua sponte examination whether the Appellate Division order finally determines the proceeding and whether a substantial constitutional question is directly involved to support the appeal taken as of right; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING - APPELLATE DIVISION'S CONDITIONAL DISMISSAL OF PROCEEDING; RECUSAL OF APPELLATE DIVISION JUSTICES; REQUEST FOR POOR PERSON RELIEF; App. Div., among other things, denied petitioner's motion for recusal of various Appellate Division justices, for transfer of his CPLR article 78 proceeding, and for poor person relief, on the ground that the facts set forth by petitioner failed to demonstrate merit to the proceeding; and ordered that the proceeding would be dismissed, without further order, if petitioner did not pay the filing fee within 120 days of the order.

WELCH, MATTER OF v PUNCH, et al.:

4th Dept. App. Div. order of 4/4/12; sua sponte examination whether the Appellate Division order finally determines the proceeding and whether a substantial constitutional question is directly involved to support the appeal taken as of right; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING - APPELLATE DIVISION'S CONDITIONAL DISMISSAL OF PROCEEDING; REQUEST FOR POOR PERSON RELIEF; App. Div. denied petitioner's motion for permission to commence his CPLR article 78 proceeding as a poor person and for other relief, on the ground that the facts set forth by petitioner failed to demonstrate merit to the proceeding; and ordered that the proceeding would be dismissed, without further order, if petitioner did not pay the filing fee within 120 days of the order.