

COURT OF APPEALS NEW FILINGS

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

**March 29, 2013 through April 4, 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.**

ALLEN B., MATTER OF v SPROAT:

2<sup>ND</sup> Dept. App. Div. judgment of 11/28/12; leave to appeal granted by App. Div., 3/6/13;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - PROVISION IN AMENDED ORDER OF CONDITIONS DIRECTING THAT, SHOULD PETITIONER FAIL TO COMPLY WITH ANY OF THE OTHER CONDITIONS IMPOSED IN THE AMENDED ORDER "AND REFUSE TO APPEAR FOR OR COMPLY WITH A PSYCHIATRIC EXAMINATION," THE COMMISSIONER OF THE NEW YORK STATE OFFICE OF MENTAL HEALTH "SHALL APPLY TO THE COURT FOR A TEMPORARY CONFINEMENT ORDER FOR THE PURPOSE OF CONDUCTING AN EFFECTIVE PSYCHIATRIC EXAMINATION IN A SECURE FACILITY" - WHETHER THAT PROVISION WAS IN EXCESS OF TRIAL JUDGE'S AUTHORITY;

App. Div. (1) granted a CPLR article 78 petition in the nature of a writ of prohibition to prohibit enforcement of a provision of an amended order of conditions of the Supreme Court, Dutchess County, which directed that should petitioner fail to comply with any of the other conditions imposed in that amended order "and refuse to appear for or comply with a psychiatric examination," the Commissioner of the New York State Office of Mental Health "shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility," and (2) prohibiting respondents from enforcing or taking action to enforce that provision of the amended order.

LEWIS (ANTHONY), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 1/17/13; affirmance; leave to appeal granted by Graffeo, J., 3/28/13;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - INSTALLATION OF GLOBAL POSITIONING SYSTEM DEVICE ON VEHICLE WITHOUT WARRANT - ALLEGED VIOLATION OF STATE AND FEDERAL CONSTITUTIONS - HARMLESS ERROR; INSTRUCTIONS - VERDICT SHEET - WHETHER VERDICT SHEET VIOLATED CPL 310.20(2) BY LISTING STORES WHERE CREDIT CARD FRAUDS OCCURRED, RATHER THAN THE BANK AND CARDHOLDER VICTIMS, WITH RESPECT TO CERTAIN COUNTS; STANDARD OF REVIEW - WHETHER THE APPELLATE DIVISION USED THE WRONG STANDARD IN DETERMINING THAT DEFENDANT'S GRAND LARCENY CONVICTIONS WERE NOT AGAINST THE WEIGHT OF THE EVIDENCE; EXPERT WITNESS - DENIAL OF VOICE IDENTIFICATION EXPERT; SENTENCE - ALLEGED DUE PROCESS VIOLATIONS;

Supreme Court, New York County convicted defendant, after a jury trial, of two counts of grand larceny in the third degree, three counts of grand larceny in the fourth degree, eight counts of criminal possession of a forged instrument in the second degree, five counts of identity theft in the first degree, scheme to defraud in the first degree and criminal possession of forgery devices, and sentenced him to an aggregate term of 9 1/3 to 28 years; App. Div. affirmed.

PALLADINO v CNY CENTRO, INC., et al.:

4<sup>TH</sup> Dept. App. Div. order of 12/21/12; reversal; leave to appeal granted by Court of Appeals, 3/21/13;

LABOR UNIONS - ACTION AGAINST UNION - IN AN ACTION AGAINST AN UNINCORPORATED LABOR ORGANIZATION FOR BREACH OF THE DUTY OF FAIR REPRESENTATION, WHETHER MARTIN v CURRAN (303 NY 276 [1951]) REQUIRES A PLAINTIFF TO PLEAD AND PROVE THAT ALL MEMBERS OF THE UNINCORPORATED LABOR ORGANIZATION UNANIMOUSLY AUTHORIZED OR RATIFIED THE ALLEGED WRONGFUL CONDUCT - APPLICABILITY OF MADDEN v AIKENS (4 NY2d 283 [1958]);

Supreme Court, Onondaga County denied in part defendants' motions for summary judgment; App. Div. reversed, granted defendants' motions for summary judgment in their entirety and dismissed the amended complaints.

ROBERT T., MATTER OF v SPROAT:

2<sup>ND</sup> Dept. App. Div. judgment of 11/28/12; leave to appeal granted by App. Div., 3/6/13;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - PROVISION IN AMENDED ORDER OF CONDITIONS DIRECTING THAT, SHOULD PETITIONER FAIL TO COMPLY WITH ANY OF THE OTHER CONDITIONS IMPOSED IN THE AMENDED ORDER "AND REFUSE TO APPEAR FOR OR COMPLY WITH A PSYCHIATRIC EXAMINATION," THE COMMISSIONER OF THE NEW YORK STATE OFFICE OF MENTAL HEALTH "SHALL APPLY TO THE COURT FOR A TEMPORARY CONFINEMENT ORDER FOR THE PURPOSE OF CONDUCTING AN EFFECTIVE PSYCHIATRIC EXAMINATION IN A SECURE FACILITY" - WHETHER THAT PROVISION WAS IN EXCESS OF TRIAL JUDGE'S AUTHORITY;

App. Div. (1) granted a CPLR article 78 petition in the nature of a writ of prohibition to prohibit enforcement of a provision of an amended order of conditions of the Supreme Court, Dutchess County, which directed that should petitioner fail to comply with any of the other conditions imposed in that amended order "and refuse to appear for or comply with a psychiatric examination," the Commissioner of the New York State Office of Mental Health "shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility," and (2) prohibiting respondents from enforcing or taking action to enforce that provision of the amended order.