

COURT OF APPEALS NEW FILINGS

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

**May 17, 2013 through May 23, 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.**

BUXBAUM v CASTRO:

2<sup>ND</sup> Dept. App. Div. order of 3/27/13; reversal; sua sponte examination whether a substantial constitutional question is directly involved or any other jurisdictional basis exists to support an appeal as of right;  
LIBEL AND SLANDER - SUFFICIENCY OF ALLEGATIONS OF DEFAMATION;  
RECORDS - MENTAL HEALTH RECORDS - SUFFICIENCY OF ALLEGATIONS OF A BREACH OF THE PSYCHOLOGIST-PATIENT PRIVILEGE;  
Supreme Court, Rockland County granted so much of defendant's motion as sought to dismiss the first cause of action and to strike the note of issue, and otherwise denied the motion; App. Div. reversed and granted so much of defendant's motion as sought to dismiss the second and third causes of action.

FORECLOSURE OF TAX LIENS [COUNTY OF SULLIVAN; MATEJKOWSKI],  
MATTER OF:

3<sup>RD</sup> Dept. App. Div. order of 4/11/13; affirmance; sua sponte examination 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;

TAXATION - TAX LIENS, TAX SALES AND TAX TITLES - FORECLOSURE - MOTION TO VACATE DEFAULT JUDGMENT - TIMELINESS OF MOTION - COUNTY'S COMPLIANCE WITH RPTL 1124 AND 1125 - DUE PROCESS; County Court, Sullivan County, in a proceeding pursuant to RPTL article 11, among other things, denied respondent Matejkowski's motion to vacate a default judgment entered against him; App. Div. affirmed.

PEREZ (REYNALDO), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/5/13; dismissal of appeal; leave to appeal granted by Pigott, J., 5/9/13;

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL FOR FAILURE TO TIMELY PROSECUTE;

Supreme Court, Bronx County convicted defendant of two counts of depraved indifference murder and two counts of manslaughter in the first degree, and sentenced him to two consecutive prison terms of 25 years to life; App. Div. denied defendant's motion for an enlargement of time to perfect the appeal and dismissed the appeal for failure to timely prosecute.

LARRY TT., MATTER OF(AND ANOTHER PROCEEDING):

3<sup>RD</sup> Dept. App. Div. order of 12/3/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right pursuant to CPLR 5601(b);

MENTAL HEALTH - PROCEEDING BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT SEX OFFENDER'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW - NO HEARING BEFORE OR AFTER RESPONDENT'S TRANSFER TO MENTAL HEALTH FACILITY - CLAIMED DENIAL OF DUE PROCESS AND EQUAL PROTECTION;

Supreme Court, Tompkins County denied respondent's motion to dismiss an application to have respondent involuntarily admitted to a psychiatric facility (9/19/08 order), and denied respondent's motion to dismiss the petition (7/2/09 order); App. Div. affirmed both orders.

YORK v YORK:

2<sup>ND</sup> Dept. App. Div. order of 9/19/12; affirmance; leave to appeal granted by App. Div., 5/6/13; Rule 500.11 review pending;

TRIAL - MISTRIAL - DENIAL OF MOTION FOR A MISTRIAL; JUDGES - RECUSAL - DISCRETION - DENIAL OF MOTION FOR RECUSAL;

Supreme Court, Queens County denied plaintiff's motion for a mistrial and recusal in an action for a divorce and ancillary relief; App. Div. affirmed.

ZEH (VINCENT), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 12/20/12; affirmance; leave to appeal granted by Pigott, J., 5/10/13;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION; SUMMARY DENIAL OF CPL 440.10 MOTION - WHETHER DEFENDANT IS ENTITLED TO A HEARING ON CPL 440.10 MOTION RAISING INADEQUACY OF RETAINED TRIAL COUNSEL; MURDER;

Ulster County Court, without a hearing, denied defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting him of murder in the second degree; App. Div. affirmed.