

COURT OF APPEALS NEW FILINGS

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

**May 24, 2013 through May 30, 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.**

BRUNO KEARNEY ARCHITECTS, LLP v ROSE:

1<sup>ST</sup> Dept. App. Div. order of 3/12/13; reversal; Rule 500.11 review pending, together with examination whether an appeal as of right lies pursuant to CPLR 5601(c);

CONTRACTS - FORMATION OF CONTRACT - QUANTUM MERUIT - ATTORNEYS' FEES - WHETHER THE APPELLATE DIVISION APPLIED AN INCORRECT STANDARD OF APPELLATE REVIEW IN THIS ACTION FOR BREACH OF A CONTRACT UNDER WHICH PLAINTIFF WAS TO PROVIDE DEFENDANT WITH A DESIGN FOR A HOUSE;

Supreme Court, New York County, after a nonjury trial, awarded judgment in plaintiff's favor; App. Div. reversed and remanded the matter for a new trial.

409-411 SIXTH STREET, LLC v MOGI:

1<sup>ST</sup> Dept. App. Div. order of 10/2/12; reversal with dissents; leave to appeal granted by App. Div., 5/21/13; Rule 500.11 review pending;

LANDLORD AND TENANT - RENT REGULATION - PRIMARY RESIDENCE - CHALLENGE TO APPELLATE DIVISION ORDER FINDING THAT THE PREPONDERANCE OF THE EVIDENCE ESTABLISHES THAT TENANT OCCUPIED THE SUBJECT APARTMENT AS HER PRIMARY RESIDENCE DURING THE RELEVANT TIME PERIOD;

Civil Court of the City of New York, New York County awarded possession to landlord in a holdover summary proceeding; App. Term affirmed; App. Div. reversed, denied the holdover petition and dismissed the proceeding.

FREZZELL v CITY OF NEW YORK et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/23/13; affirmance with dissents; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - TORT LIABILITY - EMERGENCY VEHICLES - RECKLESS DISREGARD - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THERE WERE NO TRIABLE ISSUES OF MATERIAL FACT AS TO WHETHER DEFENDANT POLICE OFFICER ACTED WITH RECKLESS DISREGARD FOR THE SAFETY OF OTHERS WHEN HIS POLICE CAR CRASHED INTO ANOTHER POLICE CAR DRIVEN BY PLAINTIFF;

Supreme Court, New York County granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

KORDISH (ROBERT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 8/30/12; dismissal of appeal; leave to appeal granted by Smith, J., 4/2/13; Rule 500.11 review pending;

CRIMES - RIGHT TO COUNSEL - DISMISSAL OF APPEAL TAKEN IN 1992 WHERE FORMER FUGITIVE ATTEMPTED TO PROCEED WITH THE APPEAL APPROXIMATELY 20 YEARS LATER - WHETHER DEFENDANT WAS ENTITLED TO THE ASSISTANCE OF COUNSEL TO OPPOSE THE DISMISSAL OF HIS APPEAL; Supreme Court, Queens County convicted defendant of a drug crime; App. Div. dismissed the appeal on the ground that defendant abandoned it and denied defendant's motion for poor person relief and the assignment of counsel.

PALATKEVICH v STANACARD, LLC:

1<sup>ST</sup> Dept. App. Div. order of 4/11/13; affirmance; sua sponte examination whether the order appealed from, which affirms a Supreme Court order granting plaintiff's application to voluntarily discontinue the action "without prejudice," 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;

DISMISSAL AND NONSUIT - DISCONTINUANCE - DENIAL OF REQUEST TO SEVER COUNTERCLAIM FROM ACTION THAT WAS VOLUNTARILY DISCONTINUED WITHOUT PREJUDICE;

Supreme Court, New York County granted plaintiff's oral application on the record, seeking leave to voluntarily discontinue the action, without prejudice, pursuant to CPLR 3217(b), and in accordance with a notice of discontinuance filed with the court; App. Div. affirmed.

SUBWAY SURFACE SUPERVISORS ASSOCIATION, MATTER OF v NEW YORK CITY TRANSIT AUTHORITY:

1<sup>ST</sup> Dept. App. Div. order of 1/22/13; affirmance; leave to appeal granted by App. Div., 5/23/13;

CIVIL SERVICE - ALLEGED VIOLATION OF CIVIL SERVICE LAW § 115 BY NEW YORK CITY TRANSIT AUTHORITY (NYCTA) - WHETHER § 115 APPLIES TO NYCTA EMPLOYEES - WHETHER THE VIOLATION OF § 115 GIVES RISE TO A CAUSE OF ACTION - EQUAL PROTECTION CLAIM - CLASSIFICATION - EQUAL PAY FOR EQUAL WORK - WHETHER SUPREME COURT ERRED IN IMPLICITLY DEEMING THE PETITION TO HAVE BEEN AMENDED TO ALLEGE A VIOLATION OF SECTION 115;

Supreme Court, New York County denied respondent NYCTA's cross motion to dismiss a CPLR article 78 petition; App. Div. affirmed.

ZAYTSEV v STANACARD, LLC:

1<sup>ST</sup> Dept. App. Div. order of 4/11/13; affirmance; sua sponte examination whether the order appealed from, which affirms a Supreme Court order granting plaintiff's application to voluntarily discontinue the action "without prejudice," 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;

DISMISSAL AND NONSUIT - DISCONTINUANCE - DENIAL OF REQUEST TO SEVER COUNTERCLAIM FROM ACTION THAT WAS VOLUNTARILY DISCONTINUED WITHOUT PREJUDICE;

Supreme Court, New York County denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.