

COURT OF APPEALS NEW FILINGS

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

**May 31, 2013 through June 6, 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.**

IDT CORP., et al. v TYCO GROUP, S.A.R.L., et al:.

1<sup>ST</sup> Dept. App. Div. order of 12/27/12; reversal; leave to appeal granted by App. Div., 5/21/13;

CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - OBLIGATION TO NEGOTIATE - BREACH OF SETTLEMENT AGREEMENT AND DUTY TO NEGOTIATE IN GOOD FAITH - CONDITIONS PRECEDENT - EFFECT OF PRIOR APPELLATE DIVISION AND COURT OF APPEALS DECISIONS IN THIS CASE WITH RESPECT TO DEFENDANTS' OBLIGATIONS UNDER THE SETTLEMENT AGREEMENT - EXTINGUISHMENT OF CONTRACTUAL OBLIGATIONS - COLLATERAL ESTOPPEL - RES JUDICATA;

Supreme Court, New York County granted defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7); App. Div. reversed, and denied defendants' motion to dismiss.

TOWN OF MONTAUK, MATTER OF v CORTEZ-VASQUEZ, &c.:

Supreme Court order of 5/15/13; dismissal of proceeding; sua sponte examination whether an appeal as of right lies pursuant to CPLR 5601(b)(2);

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CHALLENGE TO SUPREME COURT JUDGMENT DISMISSING A CPLR ARTICLE 78 PROCEEDING AS UNTIMELY;

Supreme Court, Albany County dismissed a CPLR article 78 proceeding as untimely.

RUSSELL (MARK), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 9/4/12; reversal with dissents; Rule 500.11 review pending, together with examination whether the reversal by the App. Div. was on the law alone;

CRIMES - APPEAL - STANDARD OF REVIEW - WEIGHT OF EVIDENCE - WHETHER THE APPELLATE DIVISION IMPROPERLY RELIED UPON MATTERS NOT IN THE RECORD IN DETERMINING THAT THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE;

Supreme Court, Bronx County convicted defendant, after a jury trial, of robbery in the first degree, and imposed sentence; App. Div. reversed, vacated the conviction and dismissed the indictment.

SMITH, MATTER OF v BROWN:

2<sup>ND</sup> Dept. App. Div. judgment of 4/17/13; grant of petition;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - DOUBLE JEOPARDY - DECLARATION OF MISTRIAL OVER DEFENDANT'S OBJECTION - RETRIAL PRECLUDED IN ABSENCE OF MANIFEST NECESSITY FOR MISTRIAL - TRIAL COURT DECLARED A MISTRIAL AFTER FINDING THAT THE ABSOLUTE INTEGRITY OF THE JURY PROCESS HAD BEEN COMPROMISED WHEN ONE JUROR SHARED OUTSIDE LEGAL ADVICE WITH THE REMAINING JURORS - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE TRIAL COURT ABUSED ITS DISCRETION IN DECLARING A MISTRIAL WITHOUT CONSIDERING ALTERNATIVES;

App. Div. granted a CPLR article 78 petition in the nature of prohibition to prohibit respondents from retrying petitioner in a criminal action entitled People v Smith pending in Supreme Court, Queens County, under Indictment No. 1075/09, on the ground that the retrial would violate his constitutional right not to be placed twice in jeopardy for the same offense.

TORRES v LOUZOUN ENTERPRISES, INC., &c.:

2<sup>ND</sup> Dept. App. Div. order of 4/17/13; affirmance; sua sponte examination whether so much of the App. Div. order as affirms the 5/21/12 Supreme Court order 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;

CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - HOSTILE WORK ENVIRONMENT - DISMISSAL OF COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION - DENIAL OF MOTION FOR LEAVE TO AMEND THE COMPLAINT;

Supreme Court, Queens County granted defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(7) (4/16/12 order) and denied plaintiff's motion to amend the complaint (5/21/12 order); App. Div. affirmed.