

COURT OF APPEALS NEW FILINGS

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

June 6, 2014 through June 12, 2014

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.

ALEXANDER v ALEXANDER:

1ST Dept. App. Div. order 4/8/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; HUSBAND AND WIFE AND OTHER DOMESTIC RELATIONSHIPS - SUPPORT - MAINTENANCE - EQUITABLE DISTRIBUTION - ATTORNEYS' FEES - MEDICAL EXPENSES AND INSURANCE; Supreme Court, New York County, among other things, awarded defendant wife a 35% interest in plaintiff husband's corporate stock shares, valued as of the commencement of the divorce action, failed to award defendant additional counsel and expert fees, or health insurance, or to direct plaintiff to purchase life insurance to cover his obligations under the judgment, and awarded maintenance in the amount of \$7,500 per month until the earliest of either party's death, defendant's remarriage, or December 31, 2024; App. Div. affirmed.

AURORA LOAN SERVICES, LLC v TAYLOR, &c., et al.:

2ND Dept. App. Div. order of 2/5/14; reversal; leave to appeal granted by App. Div., 4/29/14;

MORTGAGES - FORECLOSURE - STANDING TO COMMENCE ACTION - WHETHER PLAINTIFF DEMONSTRATED PHYSICAL POSSESSION OF THE MORTGAGE NOTE AT THE TIME OF COMMENCEMENT OF THE ACTION - ASSIGNMENT OF MORTGAGE BY MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

(MERS); SUMMARY JUDGMENT;

Supreme Court, Westchester County, among other things, upon a 4/13/12 order of the same court granting summary judgment to plaintiff in a mortgage foreclosure action, confirmed a referee's report and directed the sale of the subject property; App. Div. reversed the judgment, rejected the referee's report, and remitted the matter to Supreme Court for further proceedings in accordance with the App. Div. order.

JAVIER C., MATTER OF (ANONYMOUS):

2nd Dept. App. Div. order of 4/30/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

INFANTS - JUVENILE DELINQUENTS - RELIABILITY OF EYEWITNESS IDENTIFICATION - CHALLENGE TO SHOW-UP IDENTIFICATION - SUFFICIENCY OF THE EVIDENCE OF ACCESSORIAL LIABILITY;

Family Court, Kings County, order of disposition that, upon a fact-finding order of the same court dated 4/17/13, made after a hearing, finding that Javier C. committed acts which, if committed by an adult, would have constituted the crimes of robbery in the second degree, grand larceny in the fourth degree, and criminal possession of stolen property in the fifth degree, adjudged him to be a juvenile delinquent and placed him on probation for a period of 12 months; App. Div. affirmed.

DIMERY v ULSTER SAVINGS BANK:

2ND Dept. App. Div. order of 4/9/14; affirmance; sua sponte examination whether the order appealed from 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;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER THAT AFFIRMED A SUPREME COURT ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO RENEW HER PRIOR MOTION TO VACATE A JUDGMENT ENTERED IN 2000;

Supreme Court, Putnam County, denied plaintiff's motion pursuant to CPLR 2221 for leave to renew her prior motion pursuant to CPLR 5015 to vacate a judgment of the same court entered 10/26/00, which had been denied in an order of the same court dated 2/18/09; App. Div. affirmed.

HUTCHINSON v SHERIDAN HILL HOUSE CORP.:

1ST Dept. App. Div. order of 10/22/13; affirmance with two-Justice dissent; Rule 500.11 review pending;
NEGLIGENCE - SIDEWALKS - TRIP AND FALL ON METAL SCREW OR OTHER OBJECT PROTRUDING FROM THE SIDEWALK - SUMMARY JUDGMENT GRANTED TO DEFENDANT BASED UPON TRIVIAL NATURE OF DEFECT, LACK OF NOTICE, AND SPECULATIVE AND CONCLUSORY NATURE OF PLAINTIFF'S EXPERT REPORT;
Supreme Court, Bronx County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

UNIVERSAL AMERICAN CORP. v NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.:

1ST Dept. App. Div. order of 10/1/13; modification; leave to appeal granted by Court of Appeals, 6/5/14;
INSURANCE - CONSTRUCTION OF POLICY - COMPUTER FRAUD POLICY - WHETHER THE COURTS BELOW PROPERLY DETERMINED THAT THE POLICY AT ISSUE IS NOT AMBIGUOUS AND THAT THE INSURED'S LOSSES WERE NOT COVERED BY THE POLICY - CONSTRUCTION OF THE TERM "FRAUDULENT ... ENTRY OF ELECTRONIC DATA";
Supreme Court, New York County, denied plaintiff insured's motion for summary judgment and granted defendant insurer's cross motion for summary judgment; App. Div. modified to declare that the policy does not provide coverage for the claimed loss, and otherwise affirmed.

WISSELMAN, HAROUNIAN AND ASSOCIATES, P.C. v DOWLAH:

2ND Dept. App. Div. order of 5/14/14; affirmance; sua sponte examination whether the order appealed from 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;
PROCESS - SERVICE OF PROCESS - DENIAL OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION BASED UPON DEFENDANT'S FAILURE TO REBUT PRESUMPTION OF PROPER SERVICE CREATED BY THE PROCESS SERVER'S AFFIDAVIT;
Supreme Court, Nassau County, in effect, upon reargument, adhered to a prior determination of the same court dated 5/7/13, in effect, denying that branch of defendant's motion which was to dismiss the complaint for lack of personal jurisdiction; App. Div. affirmed.