

COURT OF APPEALS NEW FILINGS

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

**June 27, 2014 through July 3, 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.**

CATES, SR. (WALTER), PEOPLE v:  
1<sup>ST</sup> Dept. App. Div order of 2/21/12; affirmance; leave to appeal granted by Graffeo, J., 6/25/14;  
CRIMES - RIGHT TO COUNSEL - WHETHER THE TRIAL COURT VIOLATED DEFENDANT'S RIGHT TO COUNSEL BY CONDUCTING AN EX PARTE, UNTRANSCRIBED DISCUSSION WITH THE PEOPLE'S MAIN WITNESS WHO CLAIMED HE WAS TOO ILL TO TESTIFY ON THE DAY HE WAS SCHEDULED; Supreme Court, Bronx County, convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 25 years to life; App. Div. affirmed.

HILLCREST HOMES, LLC v ALBION MOTOR HOMES, INC. &c., et al.:  
 4<sup>TH</sup> Dept. App. Div. order of 5/2/14; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether an appeal lies of right from the unanimous order of the App. Div.;  
 LANDLORD AND TENANT - MOBILE HOME PARKS - DISPUTE OVER SALE AND REMOVAL OF MANUFACTURED HOMES - DISMISSAL FOR FAILURE TO STATE A CAUSE OF ACTION - CLAIMS ALLEGING VIOLATIONS OF REAL PROPERTY LAW § 233;

Supreme Court, Orleans County, among other things, granted defendants' motion to dismiss plaintiff's complaint; App. Div. modified by denying that part of the motion seeking dismissal of the 45<sup>th</sup> cause of action and reinstating that cause of action.

JOHNSON (ERIC), PEOPLE v:

County Court order of 12/4/13; affirmance; leave to appeal granted by Abdus-Salaam, J., 6/23/14;  
 CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE POLICE HAD REASONABLE SUSPICION TO STOP THE CAR IN WHICH DEFENDANT WAS TRAVELING BASED UPON INFORMATION PROVIDED BY AN ANONYMOUS TELEPHONE CALLER AND THE DRIVER'S COMMISSION OF A TRAFFIC INFRACTION WHILE BEING FOLLOWED BY THE POLICE;  
 Naples Town Court convicted defendant, upon his guilty plea, of misdemeanor driving while intoxicated; County Court, Ontario County, affirmed.

MIDDLEBROOKS (WILLIAM), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 5/2/14; affirmance; leave to appeal granted by Graffeo, J., 6/25/14;  
 INFANTS - YOUTHFUL OFFENDERS - WHETHER SENTENCING COURT IS REQUIRED TO DETERMINE IF DEFENDANT CONVICTED OF "ARMED FELONIES" IS ELIGIBLE FOR YOUTHFUL OFFENDER STATUS PURSUANT TO PENAL LAW § 720.10(3) - PEOPLE v RUDOLPH (21 NY3d 497[2013]);  
 County Court, Erie County, convicted defendant, upon his guilty plea, of three counts of robbery in the first degree and robbery in the second degree; App. Div. affirmed.

MOORE (KENNETH), PEOPLE v:

App. Term, 1<sup>st</sup> Dept. order of 2/22/12; affirmance; leave to appeal granted by Read, J., 6/9/14;  
 CRIMES - PLEA OF GUILTY - NO MOTION TO WITHDRAW PLEA - WHETHER GUILTY PLEA WAS INVALID UNDER PEOPLE v TYRELL (22 NY3d 359 [2013]);  
 Criminal Court of the City of New York, New York County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the seventh degree, and imposed sentence; App. Term affirmed.

NOMURA ASSET CAPITAL CORPORATION, et al. v CADWALADER, WICKERSHAM & TAFT, LLP:

1<sup>ST</sup> Dept. App. Div. order of 2/13/14; modification; leave to appeal granted by App. Div., 6/19/14;  
ATTORNEY AND CLIENT - MALPRACTICE - ACTION AGAINST LAW FIRM ALLEGING FAILURE TO PROVIDE APPROPRIATE LEGAL ADVICE AND THE RENDERING OF LEGAL OPINION WITHOUT PERFORMING THE NECESSARY DUE DILIGENCE, IN CONNECTION WITH THE SECURITIZATION OF A POOL OF COMMERCIAL MORTGAGE LOANS; SUMMARY JUDGMENT;  
Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the first cause of action; App. Div. modified by granting defendant's motion for summary judgment with respect to that part of the cause of action alleging that defendant failed to properly advise plaintiffs.

ESTATE OF WAGNER, MATTER OF (AARISMAA; WAGNER):

Surrogate's Court, Seneca County, order of 5/27/14; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the only question involved on the appeal is the constitutional validity of a statutory provision;  
COURTS - SURROGATE'S COURT - CHALLENGE TO ORDER DENYING WHAT WAS CONSTRUED AS AN APPLICATION FOR PERMISSION TO BRING A MOTION TO REMOVE THE REQUIREMENT THAT PETITIONER OBTAIN COURT PERMISSION BEFORE FILING ADDITIONAL APPLICATIONS;  
Surrogate's Court treated petitioner's papers as an application for permission to bring a motion to remove the requirement that petitioner obtain court permission before filing additional applications, and denied the application.