

COURT OF APPEALS NEW FILINGS

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

July 11, 2014 through July 17, 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.

ACE SECURITIES CORPORATION v DB STRUCTURED PRODUCTS, INC.:

1ST Dept. App. Div. order of 12/19/13; reversal; leave to appeal granted by Court of Appeals, 6/26/14;

LIMITATION OF ACTIONS - WHEN CAUSE OF ACTION ACCRUES - CONTRACT CAUSE OF ACTION STEMMING FROM BREACH OF REPRESENTATIONS AND WARRANTIES CONTAINED IN AGREEMENTS RELATED TO THE SECURITIZATION OF RESIDENTIAL MORTGAGES - TIMELINESS OF CONTRACT CAUSE OF ACTION UNDER SIX-YEAR STATUTE OF LIMITATIONS;

Supreme Court, New York County, denied defendant's motion to dismiss the complaint; App. Div. reversed, granted defendant's motion to dismiss the complaint, and directed the Clerk to enter judgment accordingly.

BROWN (STANLEY A.), PEOPLE v:

4TH Dept. App. Div. order of 2/7/14; affirmance; leave to appeal granted by Court of Appeals, 7/1/14;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - PROPER STANDARD OF PROOF TO BE APPLIED TO DEFENDANT SEEKING TO PROVE THE EXISTENCE OF A MITIGATING FACTOR WARRANTING A DOWNWARD DEPARTURE UNDER SORA; DEGREE OF CONSIDERATION A HEARING COURT SHOULD GIVE TO A CERTIFICATE OF RELIEF FROM CIVIL DISABILITIES WHEN ASSESSING A DEFENDANT POINTS UNDER RISK FACTOR 9 FOR A PRIOR DWI CONVICTION;

County Court, Jefferson County, determined that defendant is a level three risk pursuant to the Sex Offender Registration Act; App. Div. affirmed.

CARVER, MATTER OF v STATE OF NEW YORK, et al.:

2/11/14 stipulation and order, bringing up for review 2ND Dept. App. Div. order of 6/21/11; modification; leave to appeal granted by Court of Appeals, 6/26/14;

SOCIAL SERVICES - PUBLIC ASSISTANCE - STATE'S ENTITLEMENT TO REIMBURSEMENT FROM FORMER PUBLIC ASSISTANCE RECIPIENT'S LOTTERY WINNINGS - WORK EXPERIENCE PROGRAM (WEP) PARTICIPANT - WHETHER A PUBLIC ASSISTANCE BENEFICIARY WHO WAS STATUTORILY REQUIRED TO PARTICIPATE IN NEW YORK CITY'S WEP AS A CONDITION OF CONTINUED RECEIPT OF BENEFITS (SOCIAL SERVICES LAW § 336[1][d]), WAS AN "EMPLOYEE" ENTITLED TO THE MINIMUM WAGE PROTECTIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT (29 USC § 201, et seq);

Supreme Court, Kings County, in a CPLR article 78 proceeding to review a determination of the New York State Office of Temporary and Disability Assistance dated 1/8/08, withholding one half of petitioner's \$10,000 lottery prize winnings pursuant to Tax Law §1613-b and Social Services Law §131-r, granted that branch of respondents' cross motion which was to dismiss the petition pursuant to CPLR 3211(a)(7) insofar as asserted against certain respondents, denied the petition insofar as asserted against those respondents, and dismissed the proceeding as against those respondents; App. Div. modified by deleting the provision of the judgment granting that branch of respondents' cross motion which was to dismiss the fourth cause of action insofar as asserted against respondents New York State Office of Temporary and Disability Assistance and its Commissioner and dismissing that cause of action against those respondents, and substituting therefor a provision denying that branch of the cross motion; affirmed the judgment as so modified, reinstated the fourth cause of action as against those respondents, and remitted the matter to Supreme Court for further proceedings on the cause of action after respondents have been permitted to serve and file an answer.

GREATER JAMAICA DEVELOPMENT CORP., et al. MATTER OF v NEW YORK CITY TAX COMMISSION, et al.:

2ND Dept. App. Div. order of 11/27/13; reversal; leave to appeal granted by Court of Appeals, 7/1/14;

TAXATION - EXEMPTIONS - PARKING FACILITIES OWNED AND OPERATED BY A CHARITABLE NOT-FOR-PROFIT CORPORATION WITH A MISSION TO PROMOTE BUSINESS DEVELOPMENT IN A SPECIFIC AREA - WHETHER THE APPELLATE DIVISION CORRECTLY RULED THAT THE PUBLIC PARKING FACILITIES WERE ENTITLED TO A TAX EXEMPTION UNDER RPTL 420-a;

Supreme Court, Queens County, denied a CPLR article 78 petition for an order to annul a determination revoking a tax exemption granted to certain public parking facilities owned and operated by petitioner and granted respondents' cross motion to dismiss the petition; App. Div. reversed, granted the CPLR article 78 petition to the extent of annulling a determination revoking the tax exemptions granted to the subject parking facilities, and denied respondents' cross motion to dismiss the petition.

HELTZ v BARRATT et al.:

4TH Dept. App. Div. order of 3/28/14; affirmance; leave to appeal granted by Court of Appeals, 6/30/14; Rule 500.11 review pending; MOTOR VEHICLES - COLLISION - WHETHER TRIABLE ISSUE OF FACT EXISTED AS TO WHETHER DEFENDANT BARRATT EXERCISED THE REQUISITE CARE IN ATTEMPTING TO AVOID THE COLLISION - SUMMARY JUDGMENT; NEGLIGENCE;

Supreme Court, Erie County, granted defendants' motion for summary judgment dismissing the first amended complaint; App. Div. affirmed.

LOZINAK, MATTER OF v BOARD OF EDUCATION OF WILLIAMSVILLE CENTRAL SCHOOL DISTRICT:

4TH Dept. App. Div. order of 3/21/14; affirmance; leave to appeal granted by Court of Appeals, 6/30/14; Rule 500.11 review pending; EMPLOYMENT RELATIONSHIPS - WRONGFUL DISCHARGE - CPLR ARTICLE 78 PROCEEDING TO VACATE RESPONDENT'S DECISION TERMINATING EMPLOYMENT OF ACCOUNT CLERK TYPIST FOR SCHOOL DISTRICT - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT THE EMPLOYEE'S ACTIONS DID NOT INVOLVE GRAVE MORAL TURPITUDE - WHETHER THE EMPLOYEE'S TERMINATION SHOCKED THE CONSCIENCE;

Supreme Court, Erie County, among other things, granted the CPLR article 78 petition, vacated and annulled the resolution terminating petitioner's employment and directed respondent to reinstate petitioner; App. Div. affirmed.

O'BRIEN, MATTER OF v DiNAPOLI, &c.:

3RD Dept. App. Div. judgment of 4/3/14; confirmation of determination; leave to appeal granted by Court of Appeals, 7/1/14;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - DISABILITY RETIREMENT - WHETHER AN APPLICATION FOR DISABILITY RETIREMENT BENEFITS IS TIMELY FILED IF IT IS RECEIVED BY THE RETIREMENT SYSTEM VIA FAX ON THE DATE OF, BUT MINUTES AFTER, THE RETIREMENT SYSTEM MEMBER'S DEATH - RETIREMENT AND SOCIAL SECURITY LAW §363-b--2 NYCRR 366.2;

App. Div. confirmed respondent Comptroller's determination denying petitioner's application for disability retirement benefits as untimely filed, and dismissed the CPLR article 78 petition.

PIN (MATTHEW) a/k/a PINE (PHILLIP), PEOPLE v:

1ST Dept. App. Term of 10/15/13; affirmance; leave to appeal granted by Lippman, Ch.J., 6/5/14;

CRIMES - INFORMATION - CHALLENGE TO SUFFICIENCY - LARCENY - SUFFICIENCY OF ALLEGATIONS THAT DEFENDANT IMPROPERLY USED A KEY THAT DID NOT BELONG TO HIM TO LET TWO UNDERCOVER POLICE OFFICERS (AND HIMSELF) INTO THE SUBWAY THROUGH AN EMERGENCY EXIT GATE IN EXCHANGE FOR MONEY - PEOPLE v HIGHTOWER (18 NY3d 249 [2011]); THEFT OF SERVICES - SUFFICIENCY OF ALLEGATIONS BASED ON THE SWORN STATEMENT OF A TRANSIT POLICE OFFICER THAT HE OBSERVED DEFENDANT ENTER THE SUBWAY "BEYOND THE TURNSTILES" AND WITHOUT "PAYING THE REQUIRED FARE" BY "WALKING THROUGH AN EXIT GATE"; Criminal Court of the City of New York, New York County, in two judgments, convicted defendant, upon his plea of guilty, of petit larceny and theft of services and sentenced him, as a youthful offender, to a concurrent jail term of 15 days; App. Term affirmed.

REMET CORPORATION v ESTATE OF JAMES R. PYNE (DECEASED), et al.:

4TH Dept. App. Div. order of 12/27/13; reversal; leave to appeal granted by Court of Appeals, 6/30/14;

INDEMNITY - CONTRACTUAL INDEMNIFICATION - ENVIRONMENTAL REMEDIATION COSTS - NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) LETTER IDENTIFYING PLAINTIFF AS A POTENTIALLY RESPONSIBLE PARTY, REQUESTING PLAINTIFF TO DEVELOP, IMPLEMENT AND FINANCE A REMEDIAL PROGRAM FOR HAZARDOUS WASTE SITE, AND STATING THAT, IF PLAINTIFF DID NOT ACT, DEC WOULD PERFORM THE REMEDIATION AND SEEK RECOVERY FROM PLAINTIFF - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEC'S LETTER DID NOT REQUIRE PLAINTIFF TO TAKE ACTION, AND THUS, THAT PLAINTIFF WAS NOT ENTITLED TO INDEMNIFICATION PURSUANT TO AN AGREEMENT RESULTING FROM ACTIONS THAT PLAINTIFF "IS REQUIRED TO TAKE UNDER OR IN CONNECTION WITH ANY ENVIRONMENTAL LAW OR ENVIRONMENTAL PERMIT"; Supreme Court, Oneida County, granted that part of plaintiff's motion for summary judgment on the issue of liability and declaring plaintiff is entitled to indemnification for environmental losses; App. Div. reversed, denied plaintiff's motion in its entirety and, upon searching the record, granted judgment in favor of defendants declaring that plaintiff is not entitled to indemnification from defendants.

DELROY S., MATTER OF:

1ST Dept. App. Div. order of 1/14/14; modification; leave to appeal granted by Court of Appeals, 7/1/14;
INFANTS - JUVENILE DELINQUENTS - WHETHER, IN LIGHT OF THE APPELLATE DIVISION HOLDING THAT 11-YEAR OLD GAVE INCULPATORY STATEMENT WHILE SUBJECTED TO CUSTODIAL INTERROGATION WITHOUT THE BENEFIT OF MIRANDA WARNINGS, THE APPELLATE DIVISION PROPERLY DETERMINED THAT FAMILY COURT'S ERROR IN FAILING TO SUPPRESS THE STATEMENT WAS HARMLESS BEYOND A REASONABLE DOUBT; JUSTIFICATION DEFENSE;

Family Court, Bronx County, adjudicated appellate a juvenile delinquent upon a fact-finding determination that he committed acts, which, if committed by an adult, would constitute the crimes of assault in the second degree, criminal possession of a weapon in the fourth degree, petit larceny and criminal possession of stolen property in the fifth degree, and placed him on probation for a period of 18 months; App. Div. modified to the extent of vacating the findings as to petit larceny and criminal possession of stolen property and dismissing those counts of the petition.

TEXEIRA, MATTER OF v FISCHER &c.:

3RD Dept. App. Div. order of 3/27/14; affirmance; leave to appeal granted by Court of Appeals, 7/1/14;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - VIOLATION OF A PRISONER'S RIGHT TO CALL A WITNESS AT A DISCIPLINARY HEARING - WHETHER THE PROPER REMEDY FOR SUCH A VIOLATION IS EXPUNGEMENT OR REMITTAL FOR A NEW HEARING;

Supreme Court, Clinton County, granted petitioner's CPLR article 78 petition to the extent of annulling respondent's determination finding petitioner guilty of violating certain prison disciplinary rules, and remitting the matter to respondent for a new hearing; App. Div. affirmed.