

COURT OF APPEALS NEW FILINGS

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

September 12, 2014 through September 18, 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.

DRYDEN MUTUAL INSURANCE COMPANY v GOESSL:

4TH Dept. App. Div. order of 5/9/14; reversal; leave to appeal granted by Court of Appeals, 9/4/14;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - BUSINESS GENERAL LIABILITY POLICY - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT, FOR LIABILITY INSURANCE PURPOSES, DEFENDANT PLUMBER WAS AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE, FOR DEFENDANT PLUMBING COMPANY WHEN THE ALLEGED NEGLIGENT ACTS OCCURRED;

Supreme Court, Oswego County, among other things, declared that plaintiff has no duty to defend or indemnify defendant Stanley Goessl; App. Div. reversed, and granted judgment as follows: "It is ADJUDGED AND DECLARED that plaintiff is obligated to defend and indemnify Stanley Goessl in the underlying action, and that plaintiff is obligated to reimburse defendant Stanley Goessl for the reasonable attorneys' fees and expenses he incurred in defending the underlying action, and It is further ADJUDGED AND DECLARED that defendant The Main Street America Group is not obligated to defend or indemnify defendant Stanley Goessl in the underlying action."

HOLLANDER, MATTER OF v THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS:

1ST Dept. App. Div. order of 6/3/14; affirmance; leave to appeal granted by Court of Appeals, 9/16/14;

CIVIL RIGHTS - DISCRIMINATION BASED ON AGE - WHETHER THE DOCTRINE OF ELECTION OF REMEDIES BARS PETITIONER FROM FILING A CLAIM OF AGE DISCRIMINATION AGAINST A NIGHTCLUB WITH THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS, WHERE THE NEW YORK STATE DIVISION OF HUMAN RIGHTS PREVIOUSLY DISMISSED PETITIONER'S COMPLAINT ALLEGING GENDER DISCRIMINATION AGAINST THE NIGHTCLUB WITH RESPECT TO THE SAME UNDERLYING INCIDENT;

Supreme Court, New York County, denied a CPLR article 78 petition seeking to annul a determination of respondent City of New York Commission on Human Rights, which dismissed petitioner's complaint of age-based discrimination; App. Div. affirmed.

INGRAM (ROBERT L.), PEOPLE v:

4TH Dept. App. Div. order of 2/14/14; affirmance with two-Justice dissents; leave to appeal granted by Smith, J., 8/27/14; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - STOP OF DEFENDANT ON STREET - WHETHER THE POLICE HAD REASONABLE SUSPICION JUSTIFYING A STOP OF DEFENDANT AFTER DEFENDANT WAS ATTEMPTING TO PULL AN OBJECT FROM HIS POCKET IN A MANNER THAT THE POLICE TESTIFIED WAS SUGGESTIVE OF A WEAPON;

Supreme Court, Erie County, granted that part of defendant's omnibus motion that sought to suppress physical evidence and defendant's oral statements to the police; App. Div. affirmed.

LYNCH (RICKY A.), PEOPLE v:

2ND Dept. App. Div. order of 4/23/14; affirmance; leave to appeal granted by Smith, J., 9/3/14;

CRIMES - DOUBLE JEOPARDY - WHETHER DEFENDANT'S PROSECUTION IN SUFFOLK COUNTY FOR FORGERY AND OTHER CRIMES ARISING FROM HIS FILING OF A FRAUDULENT APPLICATION FOR A NON-DRIVER

IDENTIFICATION CARD ISSUED IN SUFFOLK COUNTY IS BARRED BY STATUTORY DOUBLE JEOPARDY WHERE DEFENDANT WAS CAUGHT WITH THE FAKE CARD IN WESTCHESTER AND PLEADED GUILTY IN THAT COUNTY TO CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE - WHETHER THE CRIMES WERE "SO CLOSELY RELATED IN CRIMINAL PURPOSE OR OBJECTIVE AS TO CONSTITUTE ELEMENTS OR INTEGRAL PARTS OF A SINGLE CRIMINAL VENTURE" (CPL 40.10[2]) - APPLICATION OF CPL 40.30(2)(a);

Supreme Court, Suffolk County, convicted defendant, upon a jury verdict, of criminal possession of a forged instrument in the second degree, identity theft in the first degree, and offering a false instrument for filing, and imposed sentence; App. Div. affirmed.

WASHINGTON (KAREEM), PEOPLE v:

1ST Dept. App. Div. order of 3/6/14; affirmance; leave to appeal granted by Pigott, J., 9/9/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF CONFLICT-FREE COUNSEL, WHERE, AFTER THE JURY RENDERED A VERDICT, THE TRIAL COURT DENIED DEFENDANT'S PRO SE MOTION FOR PRETRIAL ASSIGNMENT OF NEW COUNSEL IN RELIANCE ON DEFENSE COUNSEL'S REPRESENTATIONS THAT DEFENDANT'S ALLEGATIONS OF INEFFECTIVE ASSISTANCE WERE INCORRECT; Supreme Court, Bronx County, convicted defendant, after a jury trial, of robbery in the first degree, and sentenced him, as a persistent violent felony offender, to a term of 22 years to life; App. Div. affirmed.