

COURT OF APPEALS NEW FILINGS

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

November 7, 2014 through November 13, 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.

GITELSON v QUINN:

1ST Dept. App. Div. order of 6/3/14; reversal; leave to appeal granted by App. Div., 10/30/14; sua sponte examination of whether the appeal should be dismissed as untimely;
CONTRACTS - MISTAKE - MUTUAL MISTAKE - ACTION TO ENFORCE ORAL AGREEMENT TO, AMONG OTHER THINGS, COMMENCE A LOST WILL PROCEEDING - EXISTENCE OF ISSUE OF FACT AS TO WHETHER DEFENDANT WAS NEGLIGENT IN HER SEARCH FOR THE ORIGINAL WILL - WHETHER THE APPELLATE DIVISION ERRED IN RULING THAT DEFENDANT WAS NOT ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT BASED ON MUTUAL MISTAKE;

Supreme Court, New York County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. reversed and denied defendant's motion.

GREATER NEW YORK TAXI ASSOCIATION, et al. v THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION:

1ST Dept. App. Div. order of 6/10/14; reversal; leave to appeal granted by App. Div., 10/23/14;

MUNICIPAL CORPORATIONS - REGULATION OF TAXICAB BUSINESS - WHETHER NEW YORK CITY TAXI AND LIMOUSINE COMMISSION (TLC) EXCEEDED ITS AUTHORITY BY ISSUING RULE REQUIRING NEW TAXICABS TO BE SPECIFIC MODEL MADE BY SINGLE MANUFACTURER - WHETHER THE TLC VIOLATED THE SEPARATION OF POWERS DOCTRINE BY DESIGNATING A NON-HYBRID, NON-ACCESSIBLE VEHICLE AS THE CITY'S OFFICIAL TAXICAB;

Supreme Court, New York County, declared invalid the amendments to Title 35, Chapters 67 and 51 of the Rules of the City of New York that created the "Taxi of Tomorrow" project mandating that the Nissan NV200 would be New York City's Official Taxicab Vehicle" effective October 2013; App. Div. reversed and stated "it should be declared that the Revised Taxi of Tomorrow rules and Hybrid Specifications are valid."

GROSS (GORDON), PEOPLE v:

4TH Dept. App. Div. order of 6/20/14; affirmance;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - FAILURE TO OBJECT TO THE PROSECUTION'S PRESENTATION OF AND REFERENCE TO TESTIMONY OF CERTAIN NON-EXPERT WITNESSES ON THE GROUND THAT SUCH TESTIMONY BOLSTERED THE TESTIMONY OF THE VICTIM OF A CHILD SEX CRIME - WHETHER THE APPELLATE DIVISION CORRECTLY RULED THAT THE TESTIMONY DID NOT CONSTITUTE IMPROPER BOLSTERING BECAUSE IT WAS NOT ADMITTED FOR ITS TRUTH, AND THAT COUNSEL'S FAILURE TO OBJECT TO THAT TESTIMONY THEREFORE DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE - WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO CONSULT WITH OR PRESENT TESTIMONY FROM A MEDICAL EXPERT ON DEFENDANT'S BEHALF;

Wayne County Court, denied defendant's motion pursuant to CPL 440.10 to vacate a judgment convicting him of, among other things, course of sexual conduct against a child in the first degree; App. Div. affirmed.

HENRY, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 8/7/14; affirmance; leave to appeal granted by Court of Appeals, 10/28/14; Rule 500.11 review pending;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER PETITIONER'S CHALLENGES TO ALLEGED VIOLATIONS OF HIS RIGHTS TO PRESENT DOCUMENTARY EVIDENCE AND CALL WITNESSES AT HIS DISCIPLINARY HEARING WERE PRESERVED FOR JUDICIAL REVIEW; WAIVER OF PETITIONER'S RIGHTS TO PRESENT DOCUMENTARY EVIDENCE AND CALL WITNESSES;

Supreme Court, Albany County, dismissed petitioner's CPLR article 78 application to review a determination of respondent finding petitioner guilty of violating certain disciplinary rules; App. Div. affirmed.

PATTERSON, MATTER OF v GRAZIANO, et al.:

Supreme Court, Erie County, judgment of 10/21/14; sua sponte examination of whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CPLR ARTICLE 78
PROCEEDING TO VACATE RESPONDENT'S DETERMINATION DENYING
PETITIONER RELEASE ON PAROLE;

Supreme Court, Erie County, dismissed the petition to vacate respondent's determination denying petitioner release on parole and imposing a 24-month hold on petitioner.

PEREZ (FREDERICO), PEOPLE v:

1ST Dept. App. Div. order of 4/10/14; affirmance; leave to appeal granted by Smith, J., 10/30/14;

CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WAIVER OF
CONSTITUTIONAL RIGHTS - WHETHER A GUILTY PLEA TO A VIOLATION,
WHICH REQUIRED ONLY THE PAYMENT OF A \$100 FINE, MUST BE VACATED
UNDER PEOPLE v TYRELL (22 NY3d 359 [2003]) BECAUSE DEFENDANT WAS
NOT ADVISED OF HIS CONSTITUTIONAL RIGHTS UNDER BOYKIN v ALABAMA
(395 US 238[1969]);

Supreme Court, Bronx County, convicted defendant, upon his guilty plea, of disorderly conduct, and sentenced him to a \$100 fine; App. Div. affirmed.

PERLBINDER HOLDINGS, LLC v SRINIVASAN, et al.:

1ST Dept. App. Div. order of 2/13/14; reversal; leave to appeal granted by Court of Appeals, 10/28/14;

MUNICIPAL CORPORATIONS - ZONING - VARIANCE - OUTDOOR ADVERTISING
- WHETHER THE APPELLATE DIVISION ERRED IN CONSTRUING PETITIONER'S
APPEAL TO THE BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW
YORK (BSA) AS A VARIANCE APPLICATION AND DIRECTING BSA, ON
REMAND, TO CONSIDER THE VARIANCE REQUEST UNDER NEW YORK CITY
CHARTER §666(7) - WHETHER PETITIONER WAS ENTITLED TO MAINTAIN ITS
ADVERTISING SIGN, WITHOUT A VARIANCE, BASED ON ITS GOOD-FAITH
RELIANCE ON A PERMIT ISSUED BY THE NEW YORK CITY DEPARTMENT OF
BUILDINGS (DOB) AND A 2008 DETERMINATION BY THE MANHATTAN BOROUGH
BUILDING COMMISSIONER APPROVING THE ERECTION OF THE SIGN -
WHETHER THE APPELLATE DIVISION ERRED IN FINDING AS A MATTER OF
LAW THAT PETITIONER'S RELIANCE ON A PERMIT WAS IN GOOD FAITH;
Supreme Court, New York County, denied a petition to annul a
resolution of respondent BSA, which upheld a DOB decision that
revoked petitioner's permits for an outdoor advertising sign, and

to annul violations issued by DOB, and dismissed the proceeding brought pursuant to CPLR article 78; App. Div. reversed, granted the petition to the extent of annulling respondent BSA's resolution, and remanded to BSA for further proceedings consistent with the court's opinion.

RUSSO, MATTER OF v NEW YORK CITY DEPARTMENT OF EDUCATION:

1ST Dept. App. Div. order of 7/3/14; modification with a two-Justice dissent; leave to appeal granted by App. Div., 10/30/14; Rule 500.11 review pending;

SCHOOLS - TEACHERS - INCOMPETENCE - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT PENALTY OF TERMINATION WAS SHOCKING TO SENSE OF FAIRNESS AND REMANDING TO AGENCY FOR IMPOSITION OF A LESSER PENALTY;

Supreme Court, New York County, in this proceeding pursuant to Education Law §3020-a(5) and CPLR 7511, to vacate an arbitration award finding petitioner guilty of incompetence and imposing a penalty of termination, denied the petition, and granted respondent's cross motion to dismiss the petition; App. Div. modified to deny the cross motion to dismiss the petition, and to grant the petition to the extent of remanding the matter to respondent, New York City Department of Education, for imposition of a lesser penalty, and otherwise affirmed.

SIERRA CLUB, et al., MATTER OF v VILLAGE OF PAINTED POST, et al.:

4TH Dept. App. Div. order of 3/28/14; reversal; leave to appeal granted by Court of Appeals, 10/23/14;

PARTIES - STANDING - ENVIRONMENTAL PROTECTION - COMPLAINT OF TRAIN NOISE NEWLY INTRODUCED INTO NEIGHBORHOOD - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT RESIDENT LACKED STANDING BECAUSE HE FAILED TO ESTABLISH INJURY DIFFERENT FROM THAT OF PUBLIC AT LARGE - ALLEGED PRESUMPTION OF STANDING BASED UPON RESIDENT'S PROXIMITY TO A RAIL LINE THAT TRAVERSED THE ENTIRE VILLAGE AND TRAIN NOISE; SEQRA REVIEW;

Supreme Court, Steuben County, denied in part the motion of respondents Village of Painted Post, Painted Post Development, LLC and SWEPI, LP to dismiss the CPLR article 78 petition and granted petitioners summary judgment on the first cause of action; App. Div. reversed, granted the motion of respondents Village of Painted Post, Painted Post Development, LLC and SWEPI, LP to dismiss the petition in its entirety and dismissed the petition as against those respondents.