

COURT OF APPEALS NEW FILINGS

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

November 28, 2014 through December 4, 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.

BERRY (OLIVER), PEOPLE v a/k/a TUCKER (CHRIS):

2ND Dept. App. Div. order of 10/23/13; affirmance; leave to appeal granted by Lippman, Ch.J., 11/24/14;

CRIMES - WITNESSES - WHETHER WITNESS FOR THE PROSECUTION'S INVOCATION OF THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION ADDED CRITICAL WEIGHT TO THE PROSECUTION'S CASE - INFERENCES DRAWN BY WITNESS'S SILENCE; WHETHER TRIAL COURT PROPERLY PRECLUDED DEFENDANT'S EXPERT WITNESS FROM TESTIFYING ABOUT THE EFFECTS OF STRESS ON ACCURACY OF IDENTIFICATION; Supreme Court, Queens County, convicted defendant, upon a jury verdict, of murder in the second degree, attempted murder in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.

CISSE, MATTER OF v GRAHAM:

2ND Dept. App. Div. order of 8/27/14; affirmance; leave to appeal granted by Court of Appeals, 11/20/14;

PARENT, CHILD AND FAMILY - CUSTODY - CHANGE OF CUSTODY - FAMILY COURT ORDER MODIFYING PRIOR CUSTODY ORDER TO CHANGE CUSTODY FROM MOTHER TO FATHER; WHETHER FAMILY COURT'S AFFIRMED FINDING THAT A SUFFICIENT CHANGE IN CIRCUMSTANCES OCCURRED WARRANTING MODIFICATION OF ITS PRIOR CUSTODY ORDER IN THE CHILD'S BEST INTERESTS HAS A SUFFICIENT BASIS IN THE RECORD;

Family Court, Queens County, among other things, after a hearing, granted the father's petition to modify a prior order of custody and visitation dated 6/30/04 so as to award him custody of the parties' child, and denied the mother's petition, in effect, to modify the visitation provisions of the prior order; App. Div. affirmed.

DOBINSKI v LOCKHART:

4TH Dept. App. Div. order of 10/3/14; reversal; leave to appeal granted by Court of Appeals, 11/25/14;

ANIMALS - LIABILITY FOR INJURIES - DOG COLLIDING WITH BICYCLIST - EXISTENCE OF NEGLIGENCE CAUSE OF ACTION AGAINST DOG'S OWNER - WHETHER THE APPELLATE DIVISION CORRECTLY DISMISSED CAUSE OF ACTION FOR STRICT LIABILITY UPON THE GROUND THAT NO TRIABLE ISSUE OF FACT EXISTED AS TO WHETHER DEFENDANTS HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THEIR DOG HAD A PROPENSITY TO INTERFERE WITH TRAFFIC;

Supreme Court, Erie County, denied defendants' motion for summary judgment dismissing the amended complaint; App. Div. reversed, granted defendants' motion for summary judgment dismissing the amended complaint, and dismissed the amended complaint.

RED ZONE LLC v CADWALADER, WICKERSHAM & TAFT, LLP:

1ST Dept. App. Div. order of 6/19/14; affirmance; leave to appeal granted by Court of Appeals; 11/24/14;

ATTORNEY AND CLIENT - MALPRACTICE - ALLEGED NEGLIGENT DRAFTING OF AGREEMENT - WHETHER PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT; LIMITATION OF ACTIONS - TOLLING - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE STATUTE OF LIMITATIONS WAS TOLLED BY THE CONTINUOUS REPRESENTATION DOCTRINE; WHETHER THE COURT'S BELOW ERRED IN DISMISSING DEFENDANT'S AFFIRMATIVE DEFENSE OF COMPARATIVE NEGLIGENCE;

Supreme Court, New York County, amended order and judgment that awarded plaintiff over \$17.2 million; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v HUMBERTO G.:

2ND Dept. App. Div. order of 7/2/14; affirmance; leave to appeal granted by Court of Appeals, 11/20/14;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT HUMBERTO G. WAS A DETAINED SEX OFFENDER - WHETHER DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER ALONE CAN SUPPORT A FINDING THAT HUMBERTO G. SUFFERED FROM A "MENTAL ABNORMALITY" AS DEFINED IN MENTAL HYGIENE LAW § 10.03(i);

Supreme Court, Kings County, ordered that Humberto G. be confined to a secure treatment facility upon a finding, made after a jury trial, that he suffers from a mental abnormality as defined in Mental Hygiene Law § 10.03(i) and upon a determination that he is a dangerous sex offender requiring civil confinement; App. Div. affirmed.

WELLS FARGO BANK, N.A. v HAIZLIP, et al.:

Supreme Court, Albany County, order of 10/23/14; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for a direct appeal pursuant to CPLR 5601(b)(2); MORTGAGES - FORECLOSURE - APPLICATION FOR WRIT OF ASSISTANCE DIRECTING SHERIFF TO PUT FORECLOSING BANK INTO POSSESSION OF FORECLOSED PROPERTY (RPAPL § 221) - FORECLOSURE JUDGMENT ENTERED ON DEFAULT;

Supreme Court, Albany County, denied defendant Haizlip's informal application to dismiss the action, and directed the Sheriff of Albany County to put plaintiff bank into possession of the subject premises and to remove defendants Haizlip and Glaze and any persons claiming under them.