

COURT OF APPEALS NEW FILINGS

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

March 20, 2015 through March 26, 2015

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.

ABRAHAM, &c. v CHELSEA PIERS MANAGEMENT, INC.:

1ST Dept. App. Div. order of 10/7/14; reversal; leave to appeal granted by App. Div., 2/17/15; Rule 500.11 review pending; NEGLIGENCE - FORESEEABILITY - TRESPASSER DROWNING AT PIER - WHETHER THE APPELLATE DIVISION ERRED IN GRANTING DEFENDANT SUMMARY JUDGMENT DISMISSING THE COMPLAINT UPON THE GROUND THAT DECEDENT'S ACTIONS IN TRESPASSING ONTO A CLOSED PIER BY SCALING A LOCKED GATE WHILE INTOXICATED WERE NOT FORESEEABLE; Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted the motion, and directed the Clerk to enter judgment accordingly.

AYLWARD, et al., MATTER OF v ASSESSOR, CITY OF BUFFALO, et al.:

4TH Dept. App. Div. order of 2/6/15; modification; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - ASSESSMENT - REAL PROPERTY TAX LAW (RPTL) ARTICLE 7 PROCEEDINGS SEEKING REDUCTIONS IN THE VALUE OF THE ASSESSMENTS TO PETITIONERS' RESPECTIVE PROPERTIES - DISCOVERY REQUESTS BY RESPONDENTS INCLUDING INSPECTIONS OF THE INTERIORS OF PETITIONERS' HOMES - WHETHER RESPONDENTS' INTEREST IN CONDUCTING INTERIOR INSPECTIONS OUTWEIGHED PETITIONERS' PRIVACY RIGHTS UNDER THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION;

Supreme Court, Erie County, among other things, granted respondents' motion to, among other things, inspect the interior of petitioners' homes; App. Div. modified by directing that the fourth and fifth ordering paragraphs shall apply only to exterior inspections.

CARVER (LEROY), PEOPLE v:

4TH Dept. App. Div. order of 1/2/15; affirmance with a two-Justice dissent; leave to appeal granted by Whalen, J., 3/17/15; CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - LEGITIMATE REASON FOR FAILURE TO MAKE SUPPRESSION MOTION - FUTILITY OF SUPPRESSION MOTION - WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL DID NOT MOVE TO SUPPRESS THE PHYSICAL EVIDENCE; CRIMES - UNLAWFUL SEARCH AND SEIZURE - FAILURE TO FOLLOW POLICE OFFICER'S INSTRUCTIONS FOLLOWING STOP OF VEHICLE - ATTEMPTING TO EXIT VEHICLE FOLLOWING DRIVER'S FLIGHT;

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of two counts of burglary in the second degree; App. Div. affirmed.

MANOR (TYRONE D.), PEOPLE v:

4TH Dept. App. Div. order of 10/3/14; affirmance; leave to appeal granted by Pigott, J., 3/19/15;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - PURPORTED INTOXICATION OF DEFENDANT - DEFENDANT ALLEGEDLY COERCED INTO MAKING PLEA BY HIS FAMILY; SUFFICIENCY OF ALLOCUTION - INTENT AND JUSTIFICATION IN HOMICIDE PROSECUTION; WHETHER COUNTY COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA WITHOUT A HEARING; WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE PLEA PROCEEDING; County Court, Monroe County, convicted defendant, upon his plea of guilty, of murder in the second degree; App. Div. affirmed.

RIVERA, et al. v FERNANDEZ & ULLOA AUTO GROUP, et al.:

1ST Dept. App. Div. order of 12/11/14; affirmance with a two-Justice dissent; Rule 500.11 review pending;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY -
WHETHER PLAINTIFF RAISED A TRIABLE ISSUE OF FACT AS TO WHETHER HE
SUFFERED A SERIOUS INJURY WITHIN THE MEANING OF INSURANCE LAW
§ 5102(d) - SUMMARY JUDGMENT; EXPERT WITNESSES - MEDICAL
OPINIONS;

Supreme Court, Bronx County, as relevant here, granted
defendants' motion for summary judgment dismissing plaintiff
Rivera's complaint on the threshold issue of serious injury
within the meaning of Insurance Law
§ 5102(d); App. Div. affirmed.