

COURT OF APPEALS NEW FILINGS

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

June 12, 2015 through June 18, 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.

BRAHNEY (RYAN P.), PEOPLE v:

4TH Dept. App. Div. orders of 3/20/15; affirmances; leave to appeal granted by Lindley, J., 6/1/15;
CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER COUNTY COURT ERRED IN DIRECTING THAT THE SENTENCES FOR INTENTIONAL MURDER AND BURGLARY RUN CONSECUTIVELY; MURDER - FAILURE TO PROVE DEFENSE OF EXTREME EMOTIONAL DISTURBANCE - EVIDENCE OF DEFENDANT'S VIOLENT HISTORY - WHETHER THE COURTS BELOW ERRED IN CONCLUDING THAT THE FACTS, INCLUDING EXTREME BRUTALITY OF THE CRIME, WERE INSUFFICIENT TO ESTABLISH THE DEFENSE OF EXTREME EMOTIONAL DISTURBANCE; CONFESSIONS - WAIVER OF RIGHT TO HUNTLEY HEARING REGARDING CERTAIN POLICE TESTIMONY - HARMLESS ERROR;

County Court, Cayuga County, convicted defendant, after a bench trial, of two counts of murder in the second degree, burglary in the first degree, and criminal contempt in the first degree; the same court resentenced defendant as a second felony offender and directed that the sentences on the two counts of burglary in the first degree, which run concurrently with each other, shall run consecutively to the sentence imposed on the count of intentional murder in the second degree; App. Div. dismissed the appeal from the judgment insofar as it imposed sentence and otherwise affirmed, and affirmed the resentence.

ENTERGY NUCLEAR OPERATION, INC, et al., MATTER OF v NEW YORK DEPARTMENT OF STATE et al.:

3RD Dept. App. Div. order of 12/11/14; reversal; leave to appeal granted by Court of Appeals, 6/4/15;

ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL QUALITY REVIEW - WHETHER PETITIONER'S LICENSE RENEWAL APPLICATION TO THE NUCLEAR REGULATORY COMMISSION TRIGGERS CONSISTENCY REVIEW UNDER THE COASTAL ZONE MANAGEMENT ACT AND NEW YORK'S COASTAL MANAGEMENT PROGRAM (CMP) - WHETHER CERTAIN GENERATING PLANT UNITS WERE GRANDFATHERED PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; WHETHER QUALIFYING FINAL ENVIRONMENTAL IMPACT STATEMENTS WERE PREPARED FOR THE UNITS; WHETHER SUBSEQUENT CHANGES TO UNITS HAVE TRIGGERED A CONSISTENCY REVIEW UNDER THE CMP;

Supreme Court, Albany County, dismissed petitioners' application, in a combined CPLR article 78 proceeding and action for declaratory judgment, to review a determination of respondent Department of State denying petitioners' request for a declaration that their power plants are exempt from New York's Coastal Management Program; App. Div. reversed, granted the petition and declared that Indian Point Nuclear Generating Plant Unit Nos. 2 and 3 are exempt from New York's Coastal Management Program.

EZZARD v ONE EAST RIVER PLACE REALTY CO., LLC, et al.:

1ST Dept. App. Div. order of 5/5/15; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

NEGLIGENCE - MAINTENANCE OF PREMISES - MISLEVELING OF ELEVATORS - RES IPSA LOQUITUR - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT GENUINE ISSUES OF MATERIAL FACT EXIST AS TO WHETHER THE BUILDING'S ELEVATOR WAS MISLEVELED OR PLAINTIFF MERELY STUMBLER, PRECLUDING SUMMARY JUDGMENT FOR DEFENDANT ELEVATOR SERVICE MAINTENANCE COMPANY ON PLAINTIFF'S CLAIM BASED ON RES IPSA LOQUITUR;

Supreme Court, New York County, (1) denied plaintiff's motion for spoliation sanctions, (2) granted motions by defendants One East River Place Realty Co. and Solow Management Corp. for summary judgment dismissing the complaint and cross claims as to them

and (3) denied defendant New York Elevator & Electrical Corp.'s motion for leave to file an untimely motion for summary judgment and for summary judgment dismissing the complaint as to it; App. Div. modified by granting defendant New York Elevator & Electrical Corp.'s motion for consideration of its untimely motion for summary judgment, and upon such consideration, granted the motion to the extent of dismissing the notice-based claims and otherwise denied the motion as to the claim based on res ipsa loquitor, and otherwise affirmed.

FINERTY v ABEX CORPORATION:

1ST Dept. App. Div. order of 2/26/15; affirmance; leave to appeal granted by App. Div., 6/9/15;

PRODUCTS LIABILITY - EXPOSURE TO TOXIC SUBSTANCES - ASBESTOS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT FORD MOTOR COMPANY IS SUBJECT TO LIABILITY FOR INJURIES RESULTING FROM ASBESTOS-CONTAINING AUTO PARTS MANUFACTURED AND DISTRIBUTED IN IRELAND BY ITS WHOLLY OWNED SUBSIDIARY, UPON THE GROUND THAT FORD MOTOR COMPANY "ACTED AS THE GLOBAL GUARDIAN OF THE FORD BRAND, HAVING A SUBSTANTIAL ROLE IN THE DESIGN, DEVELOPMENT, AND USE OF THE AUTO PARTS DISTRIBUTED" BY ITS SUBSIDIARY, "WITH THE APPARENT GOAL OF THE COMPLETE STANDARDIZATION OF ALL PRODUCTS WORLDWIDE THAT CARRIED THE SIGNATURE FORD LOGO";

Supreme Court, New York County, denied defendant Ford Motor Company's motion for summary judgment dismissing the complaint and to dismiss for failure to state a cause of action; App. Div. affirmed.

McCULLOUGH (JAMELL R.), PEOPLE v:

4TH Dept. App. Div. order of 3/27/15; reversal; leave to appeal granted by Scudder, P.J., 5/21/15;

CRIMES - WITNESSES - EXPERT WITNESS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE TRIAL COURT ABUSED ITS DISCRETION IN PRECLUDING EXPERT TESTIMONY ON THE RELIABILITY OF EYEWITNESS IDENTIFICATIONS - WHETHER THE APPELLATE DIVISION ERRED IN GRANTING A NEW TRIAL RATHER THAN REMITTING FOR A FRYE HEARING; Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of murder in the second degree, robbery in the first degree and attempted robbery in the first degree; App. Div. reversed and granted a new trial.

230 PARK AVENUE HOLDCO, LLC v KURZMAN KARELSEN & FRANK, LLP:

1ST Dept. App. Div. order of 1/20/15; affirmance with a two-Justice dissent; leave to appeal granted by App. Div., 5/7/15; LANDLORD AND TENANT - LEASE - RIGHT TO SUBLEASE OR ASSIGN - WHETHER THE COURTS BELOW PROPERLY INTERPRETED A STIPULATION OF SETTLEMENT AS GRANTING THE TENANT THE RIGHT TO LOCATE PROSPECTIVE TENANTS FOR THE PREMISES; WHETHER THE COURTS BELOW CORRECTLY CONCLUDED THAT TRIABLE ISSUES OF FACT EXIST AS TO WHETHER THE LANDLORD BREACHED THE STIPULATION;

Supreme Court, New York County, as relevant here, denied that part of plaintiff's motion for summary judgment seeking dismissal of the affirmative defense of breach of a stipulation, and granted that part of the motion seeking dismissal of the affirmative defense of surrender; App. Div. affirmed.