

COURT OF APPEALS NEW FILINGS

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

June 19, 2015 through June 25, 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.

KENNETH COLE PRODUCTIONS, MATTER OF:

1ST Dept. App. Div. order of 11/20/14; affirmance; leave to appeal granted by Court of Appeals, 6/10/15;
CORPORATIONS - MERGER - "GOING PRIVATE" MERGER - FAIRNESS TO MINORITY SHAREHOLDERS - WHETHER THE ENTIRE FAIRNESS STANDARD APPLIES TO GOING-PRIVATE MERGERS; BUSINESS JUDGMENT DOCTRINE - PRE-DISCOVERY DISMISSAL - WHETHER THE COURTS BELOW CORRECTLY DISMISSED THE COMPLAINT UNDER THE BUSINESS JUDGMENT RULE;
Supreme Court, New York County, granted defendants' motion to dismiss the complaint pursuant to CPLR 3211; App. Div. affirmed.

LEWIS, MATTER OF v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, et al.:

1ST Dept. App. Div. order of 3/5/15; confirmation of determination and denial of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
CIVIL RIGHTS - DISCRIMINATION BASED ON DISABILITY - CPLR ARTICLE 78 PROCEEDING TO REVIEW THE DETERMINATION OF RESPONDENT NEW YORK STATE DIVISION OF HUMAN RIGHTS THAT THERE WAS NO PROBABLE CAUSE THAT RESPONDENT NEW YORK HEALTH AND HOSPITALS CORPORATION ENGAGED IN UNLAWFUL DISCRIMINATION PRACTICES AGAINST PETITIONER;
App. Div. confirmed the determination, denied the petition and dismissed the CPLR article 78 proceeding.

SMALLING (OMAR A.), PEOPLE v:

2ND Dept. App. Div. order of 3/11/15; affirmance; leave to appeal granted by Fahey, J., 6/9/15;
CRIMES - INSTRUCTIONS - SUPPLEMENTAL INSTRUCTION - WHETHER SUPREME COURT ERRED WHEN IT GAVE A SUPPLEMENTAL INSTRUCTION REGARDING CONSTRUCTIVE POSSESSION OF A WEAPON IN RESPONSE TO A NOTE FROM THE JURY;
Supreme Court, Queens County, convicted defendant of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and tampering with physical evidence, upon a jury verdict, and imposed sentence; App. Div. affirmed.

SUAREZ, MATTER OF v WILLIAMS:

4TH Dept. App. Div. order of 3/20/15; reversal; leave to appeal granted by Court of Appeals, 6/9/15;
PARENT, CHILD AND FAMILY - CUSTODY - AWARD OF CUSTODY TO GRANDPARENTS - EXTRAORDINARY CIRCUMSTANCES - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT PETITIONER GRANDPARENTS FAILED TO DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES SUFFICIENT TO DEPRIVE RESPONDENT MOTHER OF CUSTODY OF HER CHILD;
Family Court, Onondaga County, in a proceeding pursuant to Family Court Act article 6, awarded petitioners Laura Suarez and Ricardo Suarez and respondent Ernesto Suarez joint legal custody of the subject child; App. Div. reversed and dismissed the petition.

UTICA MUTUAL INSURANCE COMPANY, &c. v STYLE MANAGEMENT ASSOCIATES CORP., et al.:

2ND Dept. App. Div. order of 2/11/15; reversal; leave to appeal granted by App. Div., 6/15/15;
SUBROGATION - RIGHT OF SUBROGATION - WHETHER THE STYLE MANAGEMENT DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS AGAINST THEM UPON THE GROUND THAT THEY WERE NOT THE GENERAL CONTRACTOR ON THE UNDERLYING RENOVATION PROJECT EVEN THOUGH ONE OF THOSE DEFENDANTS WAS LISTED AS THE CONTRACTOR ON THE WORK PERMIT;

Supreme Court, Nassau County, in a subrogation action to recover benefits paid by plaintiff insurer under a policy of insurance, denied the motion by defendants Style Management Associates Corp., Style Management Corp., and Yosi Sason, also known as Yosef Sason, for summary judgment dismissing the complaint insofar as asserted against them; App. Div. reversed and granted the motion.

VILLAR v HOWARD:

4TH App. Div. order of 3/20/15; modification; leave to appeal granted by App. Div., 6/12/15;

MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - NOTICE NOT REQUIRED FOR CLAIM AGAINST SHERIFF ARISING OUT OF SEXUAL ASSAULT OF INMATE - NO DUTY BY COUNTY TO INDEMNIFY SHERIFF - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF WAS NOT REQUIRED TO SERVE A NOTICE OF CLAIM UNDER GENERAL MUNICIPAL LAW § 50-e; NEGLIGENCE - DUTY - DUTY TO PROTECT INMATE FROM SEXUAL ASSAULT BY FELLOW JAIL INMATE - POTENTIAL LIABILITY FOR DEPUTIES' NEGLIGENT TRAINING AND SUPERVISION - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT DEFENDANT OWED A DUTY OF CARE TO PLAINTIFF; SHERIFFS AND CONSTABLES - LIABILITY FOR NEGLIGENCE - SEXUAL ASSAULT OF JAIL INMATE - NO IMMUNITY OWING TO ALLEGEDLY DISCRETIONARY ACTS OF SHERIFF - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE ISSUE WHETHER DEFENDANT'S ALLEGED ACTS OF NEGLIGENCE WERE DISCRETIONARY AND THUS IMMUNE FROM LIABILITY CONSTITUTED A FACTUAL QUESTION THAT CANNOT BE DETERMINED AT THE PLEADING STAGE;

Supreme Court, Erie County, granted defendant's CPLR 3211 motion to dismiss the complaint; App. Div. modified by denying defendant's motion in part and reinstating the complaint except to the extent that it alleges that defendant is vicariously liable for the negligence of his deputy sheriffs and, as modified, affirmed.

WESTCHESTER JOINT WATER WORKS, MATTER OF v ASSESSOR OF CITY OF RYE, et al.:

2ND App. Div. order of 9/17/14; modification; leave to appeal granted by Court of Appeals, 6/11/15;

TAXATION - ASSESSMENT - REAL PROPERTY TAX LAW ARTICLE 7 PROCEEDINGS TO REVIEW ASSESSMENTS ON TWO PARCELS OF REAL PROPERTY, ONE LOCATED WHOLLY WITHIN THE RYE NECK DISTRICT AND ONE WHOLLY LOCATED IN THE RYE CITY SCHOOL DISTRICT - NOTICE OF THE PROCEEDINGS INITIALLY GIVEN ONLY TO THE SUPERINTENDENT OF THE CITY SCHOOL DISTRICT - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT THE DISMISSAL OF THE PROCEEDINGS PURSUANT TO RPTL 708(3) PRECLUDED CPLR 205(a) RELIEF TO RECOMMENCE THE PROCEEDINGS;

Supreme Court, Westchester County, among other things, granted that branch of the intervenor school district's motion which was to dismiss the proceedings on the ground that the notices of petition and petitions were not served upon the school district superintendent in accordance with RPTL 708(3), and denied that branch of petitioner's cross motion which was for leave to recommence the proceedings pursuant to CPLR 205(a); App. Div. modified by (1) deleting the provision granting that branch of the intervenor school district's motion which was to dismiss the proceedings, and substituting therefor a provision granting that branch of the motion only to the extent that the proceedings related to the parcel designated on the City of Rye Assessment Roll as section 200, block 1, lot 9, and otherwise denying that branch of the motion, and (2) deleting the provision thereof denying that branch of the City Assessor's cross motion which was to dismiss the proceedings, and substituting therefor a provision granting that branch of the cross motion only to the extent that the proceedings related to the above-described parcel, and otherwise denying that branch of the cross motion, and as so modified, affirmed.

WILLIAMS (LEONARD), PEOPLE v:

2ND Dept. App. Div. order of 12/31/14; affirmance; leave to appeal granted by Pigott, J., 6/19/15;

CRIMES - ARGUMENT AND CONDUCT OF COUNSEL - WHETHER POWER POINT PRESENTATION USED BY PROSECUTOR IN SUMMATION DEPRIVED DEFENDANT OF A FAIR TRIAL - MISCHARACTERIZATION OF TRIAL EVIDENCE - CURATIVE INSTRUCTIONS; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT TO VARIOUS COMMENTS DURING PROSECUTOR'S SUMMATION;

Supreme Court, Kings County, convicted defendant of burglary in the first degree, criminal possession of a weapon in the second degree, and assault in the second degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.