

COURT OF APPEALS NEW FILINGS

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

August 14, 2015 through August 20, 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.

ACQUEST WEHRLE, LLC v TOWN OF AMHERST (APPEAL NO. 1):

4TH Dept. App. Div. order of 6/19/15; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
CONSTITUTIONAL LAW - EQUAL PROTECTION OF LAWS - ACTION FOR MONETARY DAMAGES AGAINST TOWN FOR VIOLATION OF REAL PROPERTY DEVELOPER'S RIGHTS TO SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION IN ITS EFFORTS TO DEVELOP AN OFFICE PARK PROJECT IN A DESIGNATED WETLAND AREA; ENVIRONMENTAL PROTECTION - STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) - ENVIRONMENTAL CONSERVATION LAW ARTICLE 8;

Supreme Court, Erie County, awarded plaintiff money damages and attorneys' fees; App. Div. modified by granting that part of the motion seeking summary judgment dismissing the eighth cause of action and vacating the jury award on that cause of action, affirmed as modified, and remitted the matter for recalculation of the final judgment.

ACQUEST WEHRLE, LLC v TOWN OF AMHERST (APPEAL NO. 2):

4TH Dept. App. Div. order of 6/19/15; dismissal of appeal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEALS - DISMISSAL OF APPEAL BY APPELLATE DIVISION; ATTORNEYS' FEES;

Supreme Court, Erie County, awarded plaintiff attorneys' fees; App. Div. dismissed the appeal.

BADWAL v BADWAL:

2ND Dept. App. Div. order of 3/11/15; affirmance; sua sponte examination whether any ground exists for an appeal as of right; HUSBAND AND WIFE - EQUITABLE DISTRIBUTION - CHALLENGE TO VARIOUS ASPECTS OF THE EQUITABLE DISTRIBUTION OF ASSETS DIRECTED BY SUPREME COURT;

Supreme Court, Nassau County, directed equitable distribution of residential property in New Hyde Park, the value of plaintiff's nursing license and the proceeds from the sale of a motel owned by the parties, and directed defendant, among other things, to pay child support in the sum of \$220 per week to plaintiff through the Child Support Unit; App. Div. affirmed.

JONES (EARL), PEOPLE v:

1ST Dept. App. Div. order of 4/14/15; affirmance; leave to appeal granted by Lippman, Ch.J., 8/10/15;

CRIMES - EVIDENCE - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE AS AN EXCITED UTTERANCE OR A PRESENT SENSE IMPRESSION AN OUT-OF-COURT STATEMENT MADE BY AN UNIDENTIFIED BYSTANDER TO A POLICE OFFICER - ALLEGED DUE PROCESS AND CONFRONTATION CLAUSE VIOLATIONS; SUFFICIENCY OF THE EVIDENCE SUPPORTING DEFENDANT'S CONVICTION OF BURGLARY IN THE THIRD DEGREE;

Supreme Court, New York County, convicted defendant, after a jury trial, of burglary in the third degree and criminal trespass in the third degree, and sentenced him, as a second felony offender, to an aggregate term of three to six years; App. Div. affirmed.

LIPIN v DANSKE BANK, et al. (AND ANOTHER ACTION):

1ST Dept. App. Div. order of 7/7/15; affirmances and dismissals of appeals; sua sponte examination whether the order appealed from finally determines the actions within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

JUDGMENTS - DEFAULT JUDGMENT;

Supreme Court, New York County, denied plaintiff's motion to reargue her prior motion for default judgment (9/25/13 order); denied plaintiff's motion for a default judgment (7/23/13 order); among other things, denied plaintiff's four motions for default judgments against defendants in Action No. 2 on the ground of lack of jurisdiction due to removal of the action to federal court (6/19/14 order); denied plaintiff's motion to reargue a motion for default judgment (9/24/13 order); denied plaintiff's motion for a default judgment on the ground that the Court lacked jurisdiction due to the removal of the action to federal court (7/18/13 order); and, among other things, denied plaintiff's motion for a default judgment against defendants in Action No. 1 on the same ground (6/24/14 order); App. Div. affirmed the 6/24/14 and 6/19/14 orders and dismissed the appeals from the remaining orders.

PATTERSON (ROBERT), PEOPLE v:

1st Dept. App. Div. order of 5/5/15; affirmance; leave to appeal granted by Fahey, J., 7/13/15;

CRIMES - IDENTIFICATION OF DEFENDANT - AUTHENTICATED RECORDS ADMITTED AS CIRCUMSTANTIAL EVIDENCE OF DEFENDANT'S IDENTITY - WHETHER THE TRIAL COURT PROPERLY ADMITTED, PURSUANT TO THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, SUBSCRIBER INFORMATION FROM PRE-PAID CELLULAR PHONE RECORDS, WHICH THE ACCOUNT HOLDERS WERE NOT OBLIGATED TO PROVIDE AND WHICH THE CELL PHONE COMPANY DID NOT INDEPENDENTLY VERIFY;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of robbery in the second degree and burglary in the second degree, and convicted defendant, upon his guilty pleas, of robbery in the first and third degrees and attempted robbery in the first degree, and sentenced him, as a second violent felony offender, to an aggregate term of 20 years on all convictions; App. Div. affirmed.

TEAGUE, MATTER OF, AN ATTORNEY AND COUNSELOR-AT-LAW:

1st Dept. App. Div. order of 7/28/15; suspension of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER SUSPENDING ATTORNEY FOR THREE MONTHS - ALLEGED VIOLATIONS OF DUE PROCESS, DISCLOSURE REQUIREMENTS, AND PROCEDURAL SAFEGUARDS - ALLEGED INADEQUACY OF THE EVIDENCE;

App. Div., among other things, granted the Department Disciplinary Committee's petition to the extent of confirming so much of the determination of the Hearing Panel with respect to liability findings; disaffirmed the Hearing Panel's recommendation with respect to sanction; suspended attorney from the practice of law in the State of New York for a period of three months, effective 30 days from the date of the order; and directed attorney to continue anger management treatment for a period of one year, monitored by the New York City Bar Association's Lawyers Assistance Program.