

COURT OF APPEALS NEW FILINGS

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

October 30, 2015 through November 5, 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.

AL RUSHAID, et al. v PICTET & CIE, et al.:

1ST Dept. App. Div. order of 4/23/15; affirmance; leave to appeal granted by Court of Appeals, 10/22/15;

COURTS - JURISDICTION - LONG-ARM JURISDICTION - FOREIGN BANK'S ALLEGED TRANSFER OF KICKBACKS AND BRIBES TO NEW YORK ACCOUNTS - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT DEFENDANTS' ALLEGED CONDUCT (USING NEW YORK CORRESPONDENT BANK ACCOUNTS TO EFFECT WIRE TRANSFERS ON BEHALF OF CERTAIN INDIVIDUALS) WAS INSUFFICIENT TO CONFER PERSONAL JURISDICTION; Supreme Court, New York County, granted defendants' motion to dismiss the complaint for lack of jurisdiction under CPLR 3211, denied plaintiffs' motion for jurisdictional discovery, and dismissed the complaint; App. Div. affirmed.

COOK (WILLIAM), PEOPLE v.:

2ND Dept. App. Div. order of 5/20/15; reversal; leave to appeal granted by Court of Appeals, 10/20/15;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT ONLY ONE SORA DISPOSITION MAY BE MADE FOR ALL "CURRENT OFFENSES" EVALUATED IN A GIVEN RISK ASSESSMENT INSTRUMENT (RAI) AND THAT SORA PROCEEDING IN QUEENS COUNTY SUPREME COURT HAD TO BE DISMISSED FOR THAT REASON AND AS BARRED BY THE DOCTRINE OF RES JUDICATA, WHERE RICHMOND COUNTY SUPREME COURT ALREADY DESIGNATED DEFENDANT A LEVEL THREE SEX OFFENDER BASED UPON AN RAI THAT ENCOMPASSED DEFENDANT'S CONVICTIONS ON CRIMES COMMITTED IN BOTH COUNTIES; Supreme Court, Queens County, denied defendant's motion to dismiss the proceeding (4/22/13 order), and, after a hearing, designated defendant a level three sex offender pursuant to Correctional Law article 6-C (5/8/13 order); App. Div. reversed, granted defendant's motion to dismiss this proceeding, vacated the 5/8/13 Supreme Court order, and dismissed as academic the appeal from the 5/8/13 Supreme Court order.

GESSIN, et al. v THRONE-HOLST, et al.:

2ND Dept. App. Div. order of 9/23/15; reversal; 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;

MUNICIPAL CORPORATIONS - TAXPAYER'S ACTION - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT TOWN LAW § 64(1) DOES NOT REQUIRE THE TRUSTEE DEFENDANTS TO TURN OVER CONTROL OF THEIR REVENUES TO THE TOWN BOARD OF THE TOWN OF SOUTHAMPTON AND THAT THE EXPENDITURES OF SUCH REVENUES NEED NOT COMPLY WITH THE STATUTES THAT GOVERN TOWN FINANCES AND EXPENDITURES - ALLEGED VIOLATIONS OF ARTICLE 8, SECTIONS 1 AND 2, OF THE NEW YORK CONSTITUTION;

Supreme Court, Suffolk County, among other things, denied the motion by defendants Havemeyer, Pell, Semlear, Schultz and Warner, Jr., individually and in their official capacities as members of the Trustees of the Freeholders and Commonality of the Town of Southampton, to dismiss the complaint insofar as asserted against them, pursuant to CPLR 3211(a), and, in effect, for a declaration in their favor in connection with the second cause of action regarding the legal status of Trustee accounts, the alleged gifts of public funds, Trustee-initiated litigation, and municipal purchasing and bidding by the Trustees (1/22/14 order); and thereafter, granted so much of plaintiffs' motion as sought to preliminary enjoin defendants Havemeyer, Pell, Semlear, Shultz and Warner, Jr., individually and in their official capacities as members of the Trustees of the Freeholders and Commonality of the Town of Southampton, from disbursing funds except under stated conditions (1/31/14 order); App. Div. reversed (1) the 1/22/14

order and granted the Trustee defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them, and in effect, for a declaration in their favor in connection with the second cause of action; (2) reversed the 1/31/14 order and denied that branch of the plaintiffs' motion which was for a preliminary injunction; and (3) remitted the matter to Supreme Court for the entry of a judgment, among other things, declaring that Town Law § 64(1) does not require the Trustees to turn over control of their revenues to defendant Town Board of the Town of Southampton.

MATTER OF GOLUB (APPEAL NO. 2015-00278):

Surrogate's Court, Richmond County, letters of 8/5/15 and 9/11/15; nonacceptance of papers; sua sponte examination whether the appeal is taken from an order or judgment of Surrogate's Court from which an appeal to the Court of Appeals lies; MOTIONS AND ORDERS - DENIAL OF REQUEST FOR PERMISSION TO FILE PAPERS; Surrogate's Court, in two letters, advised appellant that his papers were not accepted for filing.

MATTER OF GOLUB (APPEAL NO. 2015-00279):

2ND Dept. App. Div. letter 8/27/15; denial of application; sua sponte examination whether the appeal is taken from an order or judgment of the Appellate Division from which an appeal to the Court of Appeals lies; MOTIONS AND ORDERS - DENIAL OF REQUEST FOR PERMISSION TO FILE MOTION; App. Div. letter advised appellant that the court denied a letter application for permission to make a motion to vacate a Surrogate's Court injunction.

HAIN, &c. v JAMISON, et al.:

4TH Dept. App. Div. order of 7/10/15; reversal; leave to appeal granted by Court of Appeals, 10/27/15; ANIMALS - ROAMING ON HIGHWAY - PERSON STRUCK BY VEHICLE WHILE ALLEGEDLY HELPING BABY CALF - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE ALLEGED NEGLIGENCE OF THE DEFENDANT IN ALLOWING A CALF TO ESCAPE ITS FARM WAS NOT A PROXIMATE CAUSE OF THE MOTOR VEHICLE ACCIDENT; Supreme Court, Steuben County, denied the motion of defendant Drumm Family Farm, Inc. for summary judgment dismissing the complaint and all cross claims against it; App. Div. reversed, granted the motion of Drumm Family Farm, Inc. for summary judgment, and dismissed the complaint and all cross claims against it.

EXECUTOR OF NEW YORK ESTATE OF KATES, et al. v
PRESSLY, &c., et al.:

2ND Dept. App. Div. order of 10/14/15; dismissal; 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;

APPEAL - MATTERS APPEALABLE - DISMISSAL - APPELLATE DIVISION
DISMISSED APPEAL TO THAT COURT ON THE GROUND THAT NO APPEAL LIES FROM AN ORDER DENYING REARGUMENT;

Supreme Court, Nassau County, denied plaintiffs' motion, in effect, for leave to reargue their motion for the entry of a default judgment, which was denied by an order of the same court dated 8/23/10; App. Div. granted defendants' cross motion to dismiss plaintiffs' appeal and dismissed the appeal.