

COURT OF APPEALS NEW FILINGS

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

January 20, 2017 through January 26, 2017

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.

BANK OF NEW YORK MELLON, &c. v IZMIRLIGIL, et al.:

2ND Dept. App. Div. order of 11/30/16; 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;

MORTGAGES - FORECLOSURE - WHETHER THE ATTORNEY AFFIRMATION REQUIREMENT OF ADMINISTRATIVE ORDER 208/13 (AND ITS PREDECESSOR ORDERS 548/10 AND 431/11) OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS AND 22 NYCRR 202.12-a(f) ARE INVALID AS ISSUED BEYOND THE AUTHORITY OF THE CHIEF ADMINISTRATIVE JUDGE; ALLEGED CONSTITUTIONAL VIOLATION, INVASION OF TRIAL COURT'S SUPERVISION OF THE RECEPTION OF EVIDENCE, AND IMPAIRMENT OF THE FORECLOSURE REMEDY;

Supreme Court, Suffolk County, granted plaintiff's motion to be relieved of any obligation to comply with the attorney affirmation requirement of Administrative Orders 548/10 and 431/11 of the Chief Administrative Judge of the Courts and 22 NYCRR 202.12-a(f); Supreme Court, thereafter denied defendant's motion for recusal; App. Div. reversed, denied plaintiff's motion to be relieved of any obligation to comply with the attorney affirmation requirement, and dismissed as academic the appeal from the order denying recusal.

CORTLANDT STREET RECOVERY CORP., et al. v BONDERMAN, et al. (AND THREE RELATED ACTIONS):

1ST Dept. App. Div. order of 9/15/16; modification; leave to appeal granted by App. Div., 1/10/17;
PARTIES - STANDING - WHETHER INDENTURE TRUSTEE HAD STANDING TO ASSERT CAUSES OF ACTION FOR BREACH OF CONTRACT, FRAUDULENT CONVEYANCE, UNLAWFUL CORPORATE DISTRIBUTION, UNJUST ENRICHMENT, AND BASED ON AN ALTER EGO THEORY; CORPORATIONS - DISREGARDING THE CORPORATE ENTITY - WHETHER COMPLAINT SUFFICIENTLY STATED A CAUSE OF ACTION UNDER A VEIL-PIERCING THEORY;
Supreme Court, New York County, granted defendants' motions to dismiss the complaint in three separate actions (9/17/14 order); then, upon renewal, adhered to the 9/17/14 determination granting defendants' motion to dismiss the complaint in Index No. 653357/11 (2/6/15) App. Div. (1) modified the 9/17/14 order by denying the motion to dismiss the complaint in the action bearing Index No. 653357/11 insofar as asserted by plaintiff Wilmington Trust Company, as indenture trustee, and, as so modified, affirmed, and (2) dismissed the appeal from the 2/6/15 order as academic.

MOODY v NEW YORK STATE BOARD OF ELECTIONS, et al.:

Supreme Court, New York County order of 12/8/16; sua sponte examination whether an appeal lies as of right pursuant to CPLR 5601(b)(2);
ELECTIONS - PRIMARY ELECTIONS - WHETHER NEW YORK STATE'S CLOSED PRIMARY SYSTEM (ELECTION LAW § 5-304) IS UNCONSTITUTIONAL;
Supreme Court denied the petition and dismissed the proceeding brought pursuant to Election Law article 16.

WEISSBROD-GURVEY v STATE OF NEW YORK, et al.:

Supreme Court, New York County order 8/29/16; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether an appeal lies as of right pursuant to CPLR 5601(b)(2);
DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT AS TO VARIOUS DEFENDANTS; VARIOUS DUE PROCESS CLAIMS;
Supreme Court, among other things, dismissed the complaint as to various defendants, denied all of the various motions for relief by plaintiff, and directed the remaining parties to appear for a preliminary conference on 9/28/16.