

COURT OF APPEALS NEW FILINGS

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

March 3, 2017 through March 9, 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.

HERMAN &c., et al. v HERMAN, et al.:

1ST Dept. App. Div. order of 11/1/16; affirmance; leave to appeal granted by App. Div., 2/7/17; Rule 500.11 review pending; Disclosure--Penalty for Failure to Disclose--Whether trial court properly precluded defendant from participating in an inquest into plaintiffs' damages where defendant failed to comply with court orders directing the disclosure of certain documents; Supreme Court, New York County, granted plaintiffs' motion to preclude defendant J. Maurice Herman from participating in an inquest to assess plaintiffs' damages against him, and denied defendant's cross motion to preclude plaintiffs from offering certain evidence at the inquest; App. Div. affirmed.

KNAPP et al. v KNAPP-PECK et al.:

Supreme Court, St. Lawrence County, order of 12/12/16; dismissal of complaint; sua sponte examination whether there is basis for an appeal from the Supreme Court order pursuant to CPLR

5601(b)(2);

Dismissal and Nonsuit--Dismissal of Complaint--Action for enforcement of a contract or avoidance of a deed to real property in which plaintiffs believed they had a life estate;

Supreme Court dismissed with prejudice pursuant to CPLR

3211(a)(1) the first, second, fourth, fifth, sixth, eighth and thirteenth causes of action contained in the complaint, and dismissed for failure to state a cause of action the third, seventh, ninth, tenth, eleventh and twelfth causes of action in the complaint.

KUZDZAL (MATTHEW), PEOPLE v:

4TH Dept. App. Div. order of 11/18/16; reversal with dissents;

leave to appeal granted by Peradotto, J., 2/16/17;

Crimes--Jurors--Discharge of Juror--Whether the trial court erred in failing to make a proper inquiry of two jurors who allegedly were overheard making disparaging comments about defendant during a court recess--possible necessity for further inquiry pursuant to People v Buford (69 NY2d 290);

Supreme Court, Erie County, convicted defendant, upon a jury verdict, of murder in the second degree and predatory sexual assault against a child; App. Div. reversed, and granted a new trial.

WHITE et al. v SCHNEIDERMAN, &c., et al.:

4TH Dept. App. Div. order of 6/10/16; modification; leave to appeal granted by Court of Appeals, 2/16/17;

Taxation--Whether New York State's imposition through Tax Law § 471 of a tax on cigarettes sold on Indian reservations to nonmembers of the tribe conflicts with state law; claimed violations of Indian Law § 6, federal treaty provisions, and state and federal constitutional protections; declaratory judgment;

Supreme Court, Cattaraugus County, granted defendants' cross motion to dismiss plaintiffs' complaint and dismissed as moot plaintiffs' motion for a preliminary injunction; App. Div. modified by reinstating the complaint to the extent that it seeks a declaration and granting judgment in favor of defendants declaring that Tax Law § 471 is not inconsistent with Indian Law § 6, the Treaty of 1842 (7 US Stat 586), or the Due Process or Commerce Clauses of the United States Constitution, and, as so modified, affirmed.