

COURT OF APPEALS NEW FILINGS

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

June 30, 2017 through July 6, 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.

JEROME A., PEOPLE &c. ex rel. v PONTE &c. et al.:

1ST Dept. App. Div. order of 6/22/17; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; Habeas Corpus--Whether the state failed to meet its probable cause burden in Mental Hygiene Law article 10 civil commitment proceeding, thereby rendering petitioner's pretrial detention unconstitutional; Sex Offender Management and Treatment Act; Supreme Court, New York County, denied petitioner's request for the court to sign an order to show cause for a writ of habeas corpus; App. Div. affirmed.

McMILLIAN, MATTER OF v LEMPKE, et al:

4TH Dept. App. Div. order of 4/28/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--Whether substantial evidence supports respondents' determination that petitioner violated certain inmate rules following a tier III disciplinary hearing; claimed due process violations including untimely conclusion of the disciplinary hearing, deprivation of petitioner's rights to call certain witnesses and present certain documentary evidence, and hearing officer bias;

Supreme Court, Erie County, denied the CPLR article 78 petition and confirmed respondents' determination that petitioner violated certain inmate rules; App. Div. affirmed.

2138747 ONTARIO, INC. v SAMSUNG C&T CORPORATION, et al.:

1ST Dept. App. Div. order of 10/11/16; affirmance; leave to appeal granted by Court of Appeals, 6/22/17;

Conflict of Laws--Law Governing Contract Action--In breach of contract action brought by nonresident alleging economic claim that accrued outside New York, whether a contract provision specifying that the agreement is to be "governed by, construed and enforced" in accordance with New York law renders inapplicable New York's borrowing statute, CPLR 202;

Supreme Court, New York County, granted defendants' motion to dismiss as time-barred the claims assigned by Skypower Corp. to plaintiff (10/8/15 order); Supreme Court thereafter granted defendants' motion to dismiss the second amended complaint with prejudice (8/29/16 order); App. Div. affirmed the 10/8/15 order; and the parties stipulated to withdraw an appeal from the 8/29/16 order.