

COURT OF APPEALS NEW FILINGS

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

October 12, 2018 through October 18, 2018

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.

CAYUGA NATION, &c. v CAMPBELL, et al.:

4TH Dept. App. Div. order of 7/25/18; affirmance with dissents; leave to appeal granted by App. Div., 9/28/18;

Native Americans--Internal Tribal Affairs--Dispute over which of two competing factions should have control as the lawful governing body of the Cayuga Nation, a sovereign Indian Nation; subject matter jurisdiction--whether determination of the controversy is beyond the authority of the courts of New York as usurping the sovereign right of the people of the Cayuga Nation to determine their own leadership;

Supreme Court, Seneca County, among other things, denied defendants' motion to dismiss the complaint; App. Div. affirmed.

CENTI v MCGILLIN:

3RD Dept. App. Div. order of 11/30/17; affirmance with dissents;

Contracts--Illegal Contracts--Dispute over money accumulated from illegal bookmaking business--whether loan agreement involving funds is enforceable;

Supreme Court, Montgomery County, entered judgment in favor of plaintiff in the sum of \$131,484.93, plus prejudgment interest; App. Div. affirmed.

FARRUGIA v 1440 BROADWAY ASSOCIATES:

1ST Dept. App. Div. order of 7/12/18; affirmance with dissents; leave to appeal granted by App. Div., 10/2/18; Rule 500.11 review pending;

Negligence--Maintenance of Premises--Whether defendant Harbour Mechanical was entitled to summary judgment dismissing the complaint as against it and the cross claims for common-law indemnification and contribution asserted by building owner; Harbour Mechanical, an independent contractor, removed oil tank from subject property, thereby exposing opening into which plaintiff fell; whether Harbour failed to exercise reasonable care in performance of its work and launched a force or instrument of harm;

Supreme Court, New York County, denied defendant Harbour Mechanical Corp.'s motion for summary judgment dismissing the complaint as against it and the cross claims of the 1440 Broadway defendants, and denied the 1440 Broadway defendants' motion for summary judgment dismissing the complaint as against them; App. Div. affirmed.

MADDICKS v BIG CITY PROPERTIES:

1ST Dept. App. Div. order of 7/26/18; modification with dissents; leave to appeal granted by App. Div., 9/27/18;

Landlord and Tenant--Rent Regulation--Whether pre-answer dismissal regarding class action allegations was premature; putative class of rent-stabilized tenants alleged that defendants engaged in systematic effort to avoid compliance with rent-stabilization law; whether Supreme Court's sua sponte dismissal of complaint based on arguments not raised by defendants was improper;

Supreme Court, New York County, upon defendants' motion, dismissed the amended complaint pursuant to CPLR 3211 without prejudice; App. Div. modified by denying the motion as to the claims, except those involving General Business Law § 349, against defendants Big City Realty Management, LLC, Big City Acquisitions, LLC, 408-412 Pineapple LLC, 510-512 Yellow Apple, LLC, 535-539 West 155 BCR, LLC, 545 Edgecombe BCR, LLC, 106-108 Convent BCR, LLC, 110 Convent BCR, LLC, 3750 Broadway BCR, LLC, 3660 Broadway BCR, LLC and 605 West 151 BCR, LLC, and by denying the motion as to the class action allegations against these defendants, except those supporting the General Business Law § 349 claim, and otherwise affirmed.

PETTUS, MATTER OF v BOARD OF DIRECTORS, et al.:

1ST Dept. App. Div. orders of 7/19/18 and 9/20/18; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal--Appellate Division--Denial of motion to reverse a prior Appellate Division order denying a motion for reargument;

App. Div., among other things, denied appellants' motion for reargument of the 4/19/18 App. Div. order, and granted respondents' cross motion to the extent of enforcing the 6/16/15 vexatious litigation order of Supreme Court, New York County (7/19/18 order); thereafter, the App. Div. denied the motion of James Pettus to reverse the 7/19/18 App. Div. order denying his motion for reargument.

WEST v B.C.R.E. - 90 WEST STREET, LLC:

1ST Dept. App. Div. order of 5/17/18; reversal; leave to appeal granted by App. Div., 9/20/18;

Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in buildings receiving Real Property Tax Law § 421-g tax benefits are subject to the luxury vacancy decontrol provisions of the Rent Stabilization Law of 1969 (Administrative Code of the City of NY) § 26-504.2; building also received low-interest mortgage financing from New York City Housing Development Corporation; interpretation of Private Housing Finance Law § 654-d(18);

Supreme Court, New York County, denied defendant B.C.R.E. 90 West Street, LLC's motion for summary judgment declaring that plaintiffs' apartments are deregulated and not subject to rent stabilization, and granted plaintiffs' cross motion for summary judgment declaring that plaintiffs' leases are subject to rent stabilization, and so declared; App. Div. reversed and declared that plaintiffs' apartments were properly deregulated.