



State of New York
Court of Appeals

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COURT OF APPEALS NEW FILINGS

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

November 29, 2024 through December 5, 2024

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.

1995 CAM LLC v WEST SIDE ADVISORS:

APL-2024-00161

1st Dept. App. Div. order of 11/9/23; affirmance; leave to appeal granted by the Court of Appeals, 11/25/24;

Landlord and Tenant—Rent—Whether tenant's failure to obtain landlord's written acceptance of the surrender of the premises precluded guarantor's avoidance of liability;

Supreme Court, New York County, granted in part plaintiff's motion for judgment as a matter of law under CPLR 3211 (c) on its claims for unpaid rent under the lease and guaranty; Supreme Court, New York County, upon reargument, granted plaintiff's motion for summary judgment on its claims for the balance of rents and attorneys' fees; Supreme Court, New York County, granted a money judgment in favor of plaintiff against

defendants; App. Div. affirmed the judgment and dismissed the appeals from the orders as subsumed in the appeal from the judgment.

HUDSON VIEW v TOWN OF FISHKILL:

APL-2024-00167

2nd Dept. App. Div. order of 10/30/24; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Municipal Corporations—Whether the term limits rule and/or the prohibition against contract zoning are violated by a memorandum of understanding entered into by a private developer and the Town of Fishkill Town Board and the Town of Fishkill Planning Board that is binding on their successors and where the Town Board agreed, among other things, not to terminate its review of the developer’s Zoning Petition and the Project in general, until it reaches a final determination on the merits in its legislative judgment regarding the best interests of the Town based on empirical data and other objective factual bases; whether the memorandum of understanding is consistent with any implied constitutional rules that one legislature may not bind a subsequent legislature and that municipal governments may not conduct zoning by contract;**

Supreme Court, Dutchess County, granted defendants’ motion under CPLR 3211(a) to dismiss the complaint; App. Div. affirmed.

KOPKO v KOPKO:

APL-2024-00168

3rd Dept. App. Div. order of 11/7/24; denied motion; sua sponte examination of whether the order appealed from finally determines the actions within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Judges—Recusal—Whether the trial judge denied defendant due process; whether defendant’s recusal motion was properly denied; whether the courts properly applied the Domestic Relations Law governing the distribution of marital property;

Supreme Court, Tompkins County, granted, among other things, plaintiff a divorce, upon a decision of the court; App. Div. affirmed, App. Div. denied reargument.

PEOPLE v SARGEANT (DEREK):

APL-2024-00169

2nd Dept. App. Div. order of 9/25/24; affirmance; leave to appeal granted by J. Ford, 11/22/24;

Crimes—Jurors—Whether defendant’s conviction by an 11-member jury violated his constitutional right to a jury of 12 after the trial court concluded that defendant “forfeited” his right by engaging in misconduct;

Supreme Court, Queens County, convicted defendant of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, criminal possession of forgery devices (two counts), criminal possession of a weapon in the fourth

degree (two counts), and unlawful possession of pistol ammunition, upon a jury verdict, and imposing sentence; App. Div., with one Justice dissenting, affirmed.