

COURT OF APPEALS NEW FILINGS

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

January 13, 2012 through January 19, 2012

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.

CANGRO v MARANGOS:

1ST Dept. App. Div. order of 12/8/11; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved or any other basis exists to support an appeal as of right;

PLEADING - SUFFICIENCY OF PLEADING - DISMISSAL OF COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION;

Supreme Court, New York County denied plaintiff's motion for summary judgment and granted defendant's cross motion to dismiss the complaint; App. Div. affirmed.

DAMIAN G. and MADISON G., MATTER OF:

4TH Dept. App. Div. order of 10/7/11; affirmance; leave to appeal granted by Court of Appeals, 1/12/12; Rule 500.11 review pending; PARENT AND CHILD - ABUSED OR NEGLECTED CHILD - WHETHER RECORD CONTAINS SUFFICIENT EVIDENCE OF NEGLIGENCE TO SUPPORT THE ADJUDICATION;
Family Court, Oneida County adjudicated the subject children to be neglected; App. Div. affirmed.

OVERSTOCK.COM, INC. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.:

12/13/11 stipulation of discontinuance, bringing up for review 1ST Dept. App. Div. order of 11/4/10; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; CONSTITUTIONAL LAW - VALIDITY OF STATUTE - CHALLENGE TO TAX LAW § 1101(b)(8)(vi); DECLARATORY JUDGMENT;
Supreme Court, New York County dismissed the complaint; App. Div. modified to declare that the statute is constitutional on its face and does not violate the Equal Protection Clause either on its face or as applied, and to reinstate the complaint for further proceedings with regard to the claims that, as applied, the statute violates the Commerce and Due Process Clauses; thereafter, plaintiff discontinued its remaining claims.

SUNRISE CHECK CASHING AND PAYROLL SERVICES, INC., et al. v TOWN OF HEMPSTEAD:

2ND Dept. App. Div. order of 11/29/11; reversal; MUNICIPAL CORPORATIONS - ZONING - REGULATION PROHIBITING CHECK-CASHING ESTABLISHMENTS WITHIN TOWN UNLESS THEY ARE LOCATED IN INDUSTRIAL AND LIGHT MANUFACTURING DISTRICTS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT, UNDER THE DOCTRINE OF CONFLICT PREEMPTION, THE REGULATION IS PREEMPTED BY BANKING LAW § 369 - SEPARATION OF POWERS - HOME RULE REQUIREMENTS;
Supreme Court, Nassau County denied plaintiffs' motion for summary judgment on the complaint and granted defendant's cross motion for summary judgment, in effect declaring that section 302(K) of article XXXI of the Building Zone Ordinance of the Town of Hempstead is valid; App. Div. reversed; granted plaintiffs' motion for summary judgment on the complaint; denied defendant's cross motion for summary judgment, in effect, declaring valid section 302(K) of article XXXI of the Building Zone Ordinance of the Town of Hempstead; and remitted the matter to Supreme Court, Nassau County, for the entry of a judgment declaring that section 302(K) of article XXXI of the Building Zone Ordinance of the Town of Hempstead is void and of no effect.

WALKER (SAMUEL), PEOPLE v:

4TH Dept. App. Div. order of 10/7/11; affirmance; leave to appeal granted by Graffeo, J., 1/9/12;

CRIMES - SUPPRESSION HEARING - VEHICLE STOPPED FOR TRAFFIC
INFRACTION THEN IMPOUNDED DUE TO SUSPENSION OF DRIVER'S LICENSE,
DESPITE ANOTHER LICENSED DRIVER IN CAR - INVENTORY SEARCH AFTER
IMPOUNDMENT OF VEHICLE REVEALED LOADED HANDGUN - WHETHER
IMPOUNDMENT POLICY PROHIBITING ANY LICENSED DRIVER OTHER THAN
REGISTERED OWNER FROM TAKING POSSESSION OF STOPPED VEHICLE
VIOLATES DRIVER'S RIGHTS;

Supreme Court, Erie County convicted defendant, upon his guilty
plea, of criminal possession of a weapon in the second degree;
App. Div. affirmed and remitted to Supreme Court for proceedings
pursuant to CPL 460.50(5).