

COURT OF APPEALS NEW FILINGS

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

September 7, 2012 through September 13, 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.

DE LA CRUZ v CADDELL DRY DOCK & REPAIR CO., INC.:

1ST Dept. App. Div. order of 4/12/12; affirmance; leave to appeal granted by Court of Appeals, 8/28/12;

LABOR - PREVAILING RATE OF WAGES (LABOR LAW § 220) - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT WORK PERFORMED ON VESSELS OWNED BY CITY AGENCIES WAS NOT "PUBLIC WORK" WITHIN THE MEANING OF LABOR LAW § 220(3) BECAUSE "THE PREVAILING WAGE LAW IS LIMITED TO THOSE WORKERS EMPLOYED IN THE CONSTRUCTION, REPAIR AND MAINTENANCE OF FIXED STRUCTURES, AND DOES NOT APPLY TO WORKERS WHO ARE SERVICING A COMMODITY OWNED BY THE CITY";

Supreme Court, Bronx County denied plaintiffs' motion for partial summary judgment on the issue of liability and granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

KOWALSKI v ST. FRANCIS HOSPITAL and HEALTH CENTERS, et al.:

2ND Dept. App. Div. order of 5/1/12; reversal; leave to appeal granted by Court of Appeals, 8/30/12;

HOSPITALS - MALPRACTICE - NEGLIGENCE - PLAINTIFF STRUCK BY VEHICLE AFTER LEAVING VOLUNTARY DETOXIFICATION PROGRAM BEFORE BEING DISCHARGED - WHETHER APPELLATE DIVISION ERRED IN HOLDING THAT CERTAIN DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS AGAINST THEM BECAUSE THEY LACKED AUTHORITY TO INVOLUNTARILY CONFINE PLAINTIFF;

Supreme Court, Dutchess County denied motions for summary judgment dismissing the complaint as against defendants St. Francis Hospital and Health Centers, Emergency Physician Services of New York, P.C. and Chandra Chintapalli; App. Div. reversed, granted the motions of defendants St. Francis Hospital and Health Centers and Emergency Physician Services of New York, P.C., for summary judgment dismissing the complaint insofar as asserted against them, and granted that branch of the motion by defendant Chandra Chintapalli that was for summary judgment dismissing the complaint insofar as asserted against him.

KOEHL, MATTER OF v FISCHER, &c.:

3RD Dept. App. Div. order of 6/28/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - CONDITIONAL RELEASE - JAIL TIME CREDIT - APPLICATION OF PENAL LAW § 70.30(3);

Supreme Court, Albany County dismissed petitioner's CPLR article 78 application to review a determination of the Department of Corrections and Community Supervision computing jail time credit; App. Div. affirmed.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., et al. v GLOBAL STRAT, INC., et al.:

1ST Dept. App. Div. order of 4/10/12; affirmance and modification; leave to appeal granted by Court of Appeals, 8/28/12;

DISCLOSURE - PENALTY FOR FAILURE TO DISCLOSE - WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING A DEFAULT JUDGMENT IN FAVOR OF PLAINTIFFS AND AGAINST THE INDIVIDUAL DEFENDANTS AS A PENALTY FOR THEIR FAILURE TO COMPLY WITH COURT-ORDERED DISCOVERY; COURTS - JURISDICTION - LONG-ARM JURISDICTION - TRANSACTION OF BUSINESS IN NEW YORK;

Supreme Court, New York County awarded plaintiffs the total sum of \$99,013,769 as against the Nasser defendants, and, in a separate order, granted so much of defendants' motion as sought to dismiss the eighth cause of action and to dismiss the complaint in its entirety as against Albert Nasser for lack of personal jurisdiction; App. Div. (1) affirmed the judgment awarding plaintiffs the sum of \$99,013,769 as against the

Nasser defendants, (2) modified the order granting so much of defendants' motion as sought to dismiss the eighth cause of action and to dismiss the complaint in its entirety as against Albert Nasser, to deny the motion as to Albert Nasser, and (3) otherwise dismissed the appeal from the order as academic.

CITY OF OSWEGO, MATTER OF v OSWEGO CITY FIREFIGHTERS ASSOCIATION, LOCAL 2707:

4TH Dept. App. Div. order of 3/16/12; affirmance; leave to appeal granted by Court of Appeals, 8/30/12;

ARBITRATION - CONFIRMING OR VACATING AWARD - CONTINUATION OF TERMS OF EXPIRED COLLECTIVE BARGAINING AGREEMENT - CONSISTENCY WITH RETIREMENT AND SOCIAL SECURITY LAW, CIVIL SERVICE LAW AND PUBLIC POLICY - WHETHER AWARD EXCEEDED ARBITRATOR'S POWERS; Supreme Court, Oswego County, in a proceeding pursuant to CPLR article 75, denied the petition and confirmed the arbitration award; App. Div. affirmed.

PEQUE (JUAN JOSE), PEOPLE v:

3RD Dept. App. Div. order of 10/6/11; affirmance; leave to appeal granted by Lippman, Ch. J., 7/30/12;

CRIMES - PLEA OF GUILTY - WHETHER TRIAL COURT'S FAILURE TO INFORM DEFENDANT, AN UNDOCUMENTED IMMIGRANT, THAT HE MIGHT BE DEPORTED BASED ON HIS CONVICTION RENDERED DEFENDANT'S GUILTY PLEA NOT KNOWING, VOLUNTARY AND INTELLIGENT; RIGHT TO COUNSEL - WHETHER COUNSEL'S FAILURE TO INFORM DEFENDANT ABOUT THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEA RENDERED COUNSEL'S REPRESENTATION INEFFECTIVE; SENTENCE; DUE PROCESS CHALLENGE TO CPL 220.50; Chemung County Court convicted defendant, upon his guilty plea, of rape in the first degree; App. Div. affirmed.