

COURT OF APPEALS NEW FILINGS

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

January 11, 2013 through January 17, 2013

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.

BARONE (VINCENT), PEOPLE v:

1ST Dept. App. Div. order of 12/27/12; modification; leave to appeal granted by Catterson, J., 12/28/12;
CRIMES - EVIDENCE - WHETHER EVIDENCE ADMITTED REGARDING THE ENTERPRISE CORRUPTION COUNT WHICH SHOULD NOT HAVE BEEN CHARGED UNDULY PREJUDICED DEFENDANT REGARDING REMAINING CHARGES;
SUFFICIENCY OF EVIDENCE TO SUPPORT DEFENDANT'S CONVICTION ON SCHEME TO DEFRAUD AND OFFERING A FALSE INSTRUMENT FOR FILING CHARGES; CLAIMED ERROR REGARDING JURY NOTE; CLAIMED DUE PROCESS VIOLATION IN TRIAL COURT'S DISRUPTING COMMENTS AND BOLSTERING OF PEOPLE'S CASE;

Supreme Court, New York County convicted defendant, after a jury trial, of enterprise corruption, attempted grand larceny in the third degree, two counts of scheme to defraud in the first degree and nine counts of offering a false instrument for filing in the first degree, and sentenced him to an aggregate term of 5 1/3 to 16 years; App. Div. modified by vacating the conviction for enterprise corruption and modified the remaining sentences to run concurrently, thereby reducing the aggregate term to 16 months to 4 years.

BYRD, A SUSPENDED ATTORNEY, MATTER OF:

2ND Dept. App. Div. order of 11/7/12; disbarment; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - DISBARMENT - RECIPROCAL PUNISHMENT - CLAIMED VIOLATION OF DUE PROCESS AND OTHER RIGHTS;

App. Div., among other things, granted petitioner Grievance Committee's motion to confirm the Special Referee's report and disbarred respondent Byrd.

WILLIAM J. JENACK ESTATE APPRAISERS & AUCTIONEERS, INC. v

RABIZADEH:

2ND Dept. App. Div. order of 9/19/12; reversal; leave to appeal granted by Court of Appeals, 1/10/13;

CONTRACTS - FORMATION OF CONTRACT - WHETHER NOTATIONS MADE BY PLAINTIFF AUCTION HOUSE CONTEMPORANEOUSLY WITH BIDDING ON AN ITEM, WHICH REFERRED TO DEFENDANT BIDDER AND THE CONSIGNOR OF AN AUCTIONED ANTIQUE BY NUMBER ONLY, CONSTITUTED A MEMORANDUM OF SALE SATISFYING THE STATUTE OF FRAUDS;

Supreme Court, Orange County, in an 11/16/09 order, denied defendant's motion for summary judgment and granted plaintiff's cross motion for summary judgment on the issue of liability and entered a 1/12/10 interlocutory judgment in favor of plaintiff and against defendant as to liability; Supreme Court, in an 8/3/10 judgment, after a nonjury trial on damages, awarded plaintiff \$497,398 while crediting defendant \$95,000 pursuant to UCC § 2-709; App. Div. reversed, granted defendant's motion for summary judgment dismissing the complaint, denied plaintiff's cross motion for summary judgment on the issue of liability, modified the 11/16/09 order accordingly, vacated the 1/12/10 interlocutory judgment, and dismissed the complaint.

KANCHARLA (V. REDDY), PEOPLE v:

1ST Dept. App. Div. order of 12/27/12; modification; leave to appeal granted by Catterson, J., 12/28/12;

CRIMES - EVIDENCE - WHETHER EVIDENCE ADMITTED REGARDING THE ENTERPRISE CORRUPTION COUNT WHICH SHOULD NOT HAVE BEEN CHARGED UNDULY PREJUDICED DEFENDANT REGARDING THE REMAINING CHARGES; SUFFICIENCY OF EVIDENCE TO SUPPORT DEFENDANT'S CONVICTION ON THE SCHEME TO DEFRAUD CHARGE RELATING TO STEEL INSPECTIONS; WHETHER THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE OFFERED IN SUPPORT OF THE DEFENSE TO CHARGES RELATING TO MIX DESIGNS;

Supreme Court, New York County convicted defendant, after a jury trial, of enterprise corruption, two counts of scheme to defraud in the first degree, nine counts of offering a false instrument for filing in the first degree and three counts of falsifying business records in the first degree, and sentenced him to an aggregate term of 7 to 21 years; App. Div. modified by vacating the convictions for enterprise corruption and offering a false instrument for filing under counts 12 and 13 as originally numbered in the indictment, and modifying the remaining sentences to run concurrently, thereby reducing the aggregate term to 16 months to 4 years.

SANDERS (EQUAN), PEOPLE v:

1ST Dept. App. Div. order of 10/18/12; affirmance; leave to appeal granted by Sweeny, Jr., J., 12/27/12;
CRIMES - SENTENCE - SECOND FELONY OFFENDER - RESENTENCING FOR PURPOSES OF IMPOSING TERM OF POSTRELEASE SUPERVISION - IF RESENTENCING OCCURS AT THE REQUEST OF THE DIVISION OF PAROLE RATHER THAN THE DEFENDANT, WHETHER THE RESENTENCING OR ORIGINAL SENTENCING DATE CONTROLS FOR THE PURPOSES OF DETERMINING IF THE PRESENT CONVICTION MEETS THE SEQUENTIALITY REQUIREMENT FOR SENTENCING AS A PERSISTENT VIOLENT FELONY OFFENDER;
Supreme Court, New York County convicted defendant, upon his guilty plea, of attempted criminal possession of a weapon in the second degree, and sentenced him, as a second violent felony offender, to a term of seven years; App. Div. affirmed.

WEBB-WEBBER v COMMUNITY ACTION FOR HUMAN SERVICES, INC., et al.:

1ST Dept. App. Div. order of 9/27/12; reversal; leave to appeal granted by Court of Appeals, 1/8/13;
LABOR - WHISTLEBLOWER LAW - WHETHER A LABOR LAW § 740(2) CLAIM REQUIRES EMPLOYEES TO CITE IN THEIR PLEADINGS THE SPECIFIC LAW, RULE OR REGULATION THAT IS ALLEGEDLY VIOLATED BY THEIR EMPLOYER TO STATE A CAUSE OF ACTION;
Supreme Court, Bronx County, among other things, denied defendants' motion to dismiss the first two causes of action against two of the defendants; App. Div. reversed, insofar as appealed from, and granted the motion to dismiss the first two causes of action as against the remaining two defendants for failure to state a cause of action, thus dismissing the complaint in its entirety.