

COURT OF APPEALS NEW FILINGS

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

January 18, 2013 through January 24, 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.

ALF v BUFFALO NEWS, INC.:

4th Dept. App. Div. order of 11/16/12; affirmance with two-justice dissent; Rule 500.11 review pending;

LIBEL AND SLANDER - FAIR COMMENT - NEWSPAPER ARTICLES - ABSOLUTE PRIVILEGE - CLAIMED DEFAMATION BY NEWSPAPER REPORTING ON SETTLEMENT BETWEEN COMPANY OWNED BY PLAINTIFF AND U.S. GOVERNMENT - WHETHER NEWSPAPER ARTICLES PUBLISHED BY DEFENDANT WERE SUBSTANTIALLY TRUE AND THEREFORE PRIVILEGED UNDER CIVIL RIGHTS LAW § 74;

Supreme Court, Erie County granted defendant's motion for summary judgment, denied plaintiff's cross motion for summary judgment and dismissed the complaint; App. Div. affirmed.

BISCONE &c. v JetBLUE AIRWAYS CORPORATION, et al. (APP. DIV. NOS. 2010-11745 & 2011-02683):

2ND Dept. App. Div. order of 12/26/12; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

TORTS - FALSE IMPRISONMENT - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - CONFINEMENT OF COMMERCIAL AIRLINE PASSENGER IN AIRPLANE ON TARMAC FOR SEVERAL HOURS - PREEMPTION OF CLAIMS BY FEDERAL LAW; CLASS CERTIFICATION; MOTION TO RENEW OR REARGUE MOTION FOR CLASS CERTIFICATION;

Supreme Court, Queens County granted that branch of defendant JetBlue's motion which was to dismiss, as preempted, the causes of action in the amended complaint to recover damages for false imprisonment, intentional infliction of emotional distress, and fraud and deceit, and so much of the cause of action to recover damages for negligence as was not predicated on physical injury; thereafter, the same court denied plaintiff's motion for leave to renew or reargue her prior motion for class certification pursuant to CPLR article 9; App. Div. affirmed.

BISCONE &c. v JetBLUE AIRWAYS CORPORATION, et al. (APP. DIV. NO. 2012-00604):

2nd Dept. App. Div. order of 12/26/12; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

DISCLOSURE - PROTECTIVE ORDER - DENIAL OF PROTECTIVE ORDER SOUGHT PURSUANT TO CPLR 3103(a); CLASS ACTION FILED ELECTRONICALLY - CONCERN REGARDING DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION; Supreme Court, Queens County denied that branch of plaintiff's cross motion which was for a protective order pursuant to CPLR 3103(a); App. Div. affirmed.

HAWKINS (SEAN), PEOPLE v:

App. Term, 2nd, 11th and 13th Judicial Districts order of 5/21/12; reversal; leave to appeal granted by Smith, J., 12/17/12; Rule 500.11 review pending;

CRIMES - VERDICT - SETTING VERDICT ASIDE - WHETHER MOTION TO SET ASIDE VERDICT, MADE BEFORE SENTENCING BUT NOT MEETING THE REQUIREMENT THAT SUCH MOTION BE MADE ON A "GROUND APPEARING IN THE RECORD" (CPL 330.30[1]) MAY BE TREATED AS A "DE FACTO" MOTION TO VACATE THE JUDGMENT UNDER CPL 440.10 - DEFENDANT MOVED TO SET ASIDE THE VERDICT ON THE GROUND THAT HIS RIGHT TO PUBLIC TRIAL WAS VIOLATED;

Criminal Court of the City of New York, Kings County granted defendant's motion pursuant to CPL 330.30 to set aside the verdict convicting defendant of ten counts of sexual abuse in the second degree, ten counts of sexual abuse in the third degree, and endangering the welfare of a child; App. Term reversed, denied defendant's motion to set aside the verdict, reinstated the verdict and remitted the matter to Criminal Court for further proceedings.

KEIJONTE W., MATTER OF (ADMINISTRATION FOR CHILDREN'S SERVICES; TAMARA W.)(AND 4 OTHER PROCEEDINGS):

2ND Dept. App. Div. order of 12/12/12; affirmance; 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;

PARENT AND CHILD - ABUSED OR NEGLECTED CHILD - CLAIMED DENIAL OF DUE PROCESS AND RIGHT TO CONFRONT WITNESSES AGAINST MOTHER - EVIDENCE AGAINST MOTHER ADMITTED VIA REPORTS OF CHILD ABUSE EVALUATOR, WITHOUT ANY TESTIMONY - HEARSAY - HOSPITALIZED MOTHER UNABLE TO TESTIFY ON HER OWN BEHALF; SUFFICIENCY OF THE EVIDENCE TO SUPPORT FINDINGS MADE AGAINST MOTHER;

Family Court, Kings County, upon finding, among other things, that the mother abused the child Keiajae W., derivatively abused the other four subject children, and neglected all of the subject children, released the children Nkaiyah U. and Jahmyra U. to the custody of their father under the supervision of a child protective agency, social services official or duly authorized agency, and placed the children Keijonte W., Keiajae W. and Keijon W. in the custody of the Commissioner of Social Services; App. Div. affirmed.

MASHREQBANK PSC v AHMED HAMAD AL GOSAIBI & BROTHERS COMPANY (AND A THIRD-PARTY ACTION):

1ST Dept. App. Div. order of 9/25/12; reversal; sua sponte examination whether the appellant is a party aggrieved within the meaning of CPLR 5511; leave to appeal granted by App. Div., 12/28/12;

COURTS - FORUM NON CONVENIENS - WHETHER THE APPELLATE DIVISION PROPERLY DETERMINED THAT SUPREME COURT ABUSED ITS DISCRETION AS A MATTER OF LAW BY DISMISSING THE COMPLAINT ON ITS OWN MOTION IN THE MAIN ACTION ON THE GROUND OF FORUM NON CONVENIENS, WHERE THE ONLY MOTION BEFORE THE COURT WAS A THIRD-PARTY DEFENDANT'S MOTION TO DISMISS THE THIRD-PARTY COMPLAINT;

Supreme Court, New York County granted the "third-party defendant's motion to dismiss these actions in their entirety pursuant to CPLR 327(a) and the ... doctrine of forum non conveniens," and dismissed the third-party action; App. Div. reversed and reinstated the complaint and third-party complaint.

POLLACK, MATTER OF v FORMICA (AND ANOTHER PROCEEDING):

2ND Dept. App. Div. order of 7/25/12; 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;

PROCEEDING AGAINST BODY OR OFFICER - CLAIMED VIOLATION OF DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS;

App. Div. denied a motion for leave to appeal to that court from a March 20, 2012 Supreme Court, Orange County order.

TORRES (DENNISSE) a/k/a TORRES RODRIGUEZ (DEENISSE) &c. v RICH et al.:

3RD Dept. App. Div. order of 11/29/12; affirmance with dissents; Rule 500.11 review pending;

JUDGMENTS - SUMMARY JUDGMENT - WHETHER DEFENDANT SAINT CABRINI HOME, INC. WAS ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT AGAINST IT - APPROPRIATE STANDARD OF CARE - WHETHER DEFENDANT SAINT CABRINI HOME, INC. MET ITS DUTY TO PROVIDE THE DEGREE OF CARE TO PLAINTIFF THAT A REASONABLE PARENT WOULD PROVIDE;

Supreme Court, Ulster County granted the motion by defendant Saint Cabrini Home, Inc. for summary judgment dismissing the complaint against it; App. Div. affirmed.