

COURT OF APPEALS NEW FILINGS

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

October 11, 2013 through October 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.

KASCKAROW, MATTER OF v BOARD OF EXAMINERS OF SEX OFFENDERS OF STATE OF NEW YORK:

2ND Dept. App. Div. order of 5/15/13; affirmance; leave to appeal granted by Court of Appeals, 10/10/13;
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78
PROCEEDING TO REVIEW DETERMINATION OF BOARD OF EXAMINERS OF SEX OFFENDERS OF THE STATE OF NEW YORK THAT PETITIONER IS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO THE SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ART. 6-C) - WHETHER A PLEA IN FLORIDA OF NOLO CONTENDERE TO A FELONY SEX CRIME CONSTITUTES A "CONVICTION" UNDER SORA SUCH THAT REGISTRY AS A SEX OFFENDER IS REQUIRED IN NEW YORK;

Supreme Court, Kings County, denied a CPLR article 78 petition and dismissed the proceeding; App. Div. affirmed.

McIVER-MORGAN, INC., MATTER OF v DAL PIAZ, et al.:

1ST Dept. App. Div. order of 5/9/13; affirmance; leave to appeal granted by App. Div., 9/17/13; Rule 500.11 review pending; ARBITRATION - CONFIRMING OR VACATING AWARD - PUBLIC POLICY INQUIRY - FEES FOR ARCHITECTURAL SERVICES - CONTRACTOR ALLEGEDLY PERFORMING UNLICENSED ARCHITECTURAL SERVICES; Supreme Court, New York County, granted petition to confirm an arbitration award; App. Div. affirmed.

McLEAN (SAMUEL), PEOPLE v:

3RD Dept. App. Div. order of 8/8/13; affirmance; leave to appeal granted by McCarthy, J., 9/18/13; CRIMES - RIGHT TO COUNSEL - INCULPATORY STATEMENT TAKEN BY POLICE WHILE DEFENDANT IMPRISONED ON UNRELATED CHARGE - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT THE POLICE FULFILLED THEIR OBLIGATION TO RESOLVE AN AMBIGUITY AS TO WHETHER DEFENDANT WAS REPRESENTED BY COUNSEL IN A HOMICIDE INVESTIGATION BY DETERMINING THAT COUNSEL'S REPRESENTATION OF DEFENDANT HAD TERMINATED PRIOR TO QUESTIONING HIM; Supreme Court, Schenectady County, after a hearing, denied defendant's motion pursuant to CPL 440.10 and 440.20 to, among other things, vacate the judgment convicting him of two counts of murder in the second degree, three counts of attempted robbery in the first degree, three counts of criminal possession of a weapon in the second degree, six counts of criminal possession of a weapon in the third degree, conspiracy in the fourth degree and criminal mischief in the third degree; App. Div. affirmed.

172 VAN DUZER REALTY CORPORATION v GLOBE ALUMNI STUDENT ASSISTANCE ASSOCIATION, INC., et al.:

1ST Dept. App. Div. order of 1/22/13; affirmance; leave to appeal granted by Court of Appeals, 10/10/13; LANDLORD AND TENANT - LEASE - ACCELERATION PROVISION - WHETHER AN ACCELERATION CLAUSE IN A COMMERCIAL LEASE, WHICH ALLOWS THE LANDLORD TO COLLECT THE FULL RENT DUE UNDER THE LEASE, IS ENFORCEABLE WHERE THE LANDLORD TERMINATES THE LEASE AFTER THE TENANT FAILS TO COMPLY WITH A NOTICE TO CURE AND VACATES THE PROPERTY AND THE LANDLORD DOES NOT MITIGATE DAMAGES; Supreme Court, New York County, awarded damages to plaintiff; App. Div. affirmed.

PACHERILLE (ANTHONY), PEOPLE v:

3RD Dept. App. Div. order of 5/2/13; affirmance; leave to appeal granted by Graffeo, J., 10/3/13; Rule 500.11 review pending; CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL SENTENCING COURT'S DENIAL OF YOUTHFUL OFFENDER STATUS - SENTENCING COURT BELIEVED THAT THE PLEA AGREEMENT PRECLUDED YOUTHFUL OFFENDER TREATMENT FOR THE 16-YEAR-OLD DEFENDANT;

County Court, Oswego County, convicted defendant, upon his guilty plea, of attempted murder in the second degree, and sentenced him to a term of 11 years plus five years postrelease supervision; thereafter, the same court, without a hearing, denied defendant's motion pursuant to CPL 440.20 to set aside the sentence; App. Div. affirmed.