

COURT OF APPEALS NEW FILINGS

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

November 15, 2013 through November 21, 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.

APPLEGATE v STATE OF NEW YORK:

2ND Dept. App. Div. order of 10/7/13; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING APPEAL FOR FAILURE TO TIMELY PERFECT IN ACCORDANCE WITH THE RULES OF THAT COURT - APPEAL DISMISSED AFTER COURT DENIED MOTION TO WAIVE FILING FEE AND FOR LEAVE TO FILE A REDUCED NUMBER OF PAPERS ON APPEAL;

Court of Claims denied plaintiff's motion for summary judgment on the claim and granted defendant's cross motion to dismiss the claim; App. Div. dismissed the appeal on the Court's own motion for failure to timely perfect in accordance with the rules and prior orders of that court.

BORDEN &c., et al. v 400 EAST 55TH STREET ASSOCIATES, L.P.:

1ST Dept. App. Div. order of 4/25/13; affirmance; leave to appeal granted by App. Div., 10/22/13;

ACTIONS - CLASS ACTIONS - WHETHER PLAINTIFF HAS DEMONSTRATED THAT SHE IS A PROPER CLASS REPRESENTATIVE IN A RENT STABILIZATION LAW MATTER - CPLR 901(b) - WAIVER BY PLAINTIFF OF HER RIGHT TO TREBLE DAMAGES UNDER RENT STABILIZATION LAW - LANDLORD'S CLAIMED UNLAWFUL DEREGULATION OF APARTMENTS WHILE RECEIVING J-51 BENEFITS;

Supreme Court, New York County, denied plaintiff's motion for class certification, without prejudice to renew upon submission of an affidavit by plaintiff demonstrating that she is a proper class representative (11/10/11 order); upon renewal, Supreme Court granted plaintiff's motion for class certification and related relief (4/13/12 order); App. Div. affirmed the 4/13/12 order and dismissed the appeal from the 11/10/11 order.

FORD, et al., MATTER OF v NEW YORK STATE RACING AND WAGERING BOARD:

3RD Dept. App. Div. order of 6/6/13; modification;

HORSE RACING - HARNESS RACES - STATE'S AUTHORITY TO ADOPT REGULATION PERMITTING OUT-OF-COMPETITION DRUG TESTING OF HARNESS RACEHORSES - 180-DAY WINDOW PRIOR TO COMPETITION IN WHICH HORSES ANTICIPATED TO RACE MAY BE DRUG TESTED - REQUIREMENT THAT LICENSED OWNERS AND TRAINERS PRODUCE, UPON DEMAND, HORSE STABLED WITHIN 100-MILE RADIUS OF NEW YORK TRACK - LEGAL RIGHTS OF PRIVATE HORSE FARM OWNERS - WHETHER PROVISIONS OF REGULATION ARE UNCONSTITUTIONAL AND/OR ARBITRARY AND CAPRICIOUS;

Supreme Court, Schenectady County, granted petitioners' application, in a proceeding pursuant to CPLR article 78, to annul 9 NYCRR 4120.17; App. Div. modified by reversing so much thereof as annulled and enjoined respondent from enforcing all portions of 9 NYCRR 4120.17 except 9 NYCRR 4120(e)(3).

433 SUTTON CORP. v BRODER:

1ST Dept. App. Div. order of 6/27/13; reversal with a two-Justice dissent; leave to appeal granted by App. Div., 10/10/13; Rule 500.11 review pending;

ATTORNEY AND CLIENT - COMPENSATION - IN DISPUTE BETWEEN SHAREHOLDER AND COOPERATIVE ASSOCIATION, WHETHER OUTCOME OF ACTION WARRANTS AN AWARD OF ATTORNEYS' FEES IN FAVOR OF SHAREHOLDER - PREVAILING PARTY; CONDOMINIUMS AND COOPERATIVES; Supreme Court, New York County, denied defendant's motion for attorneys' fees; App. Div. reversed, granted defendant's motion for attorneys' fees, and remanded the matter to Supreme Court for a hearing on the amount of reasonable attorneys' fees owed to defendant.

PATERNO v LASER SPINE INSTITUTE, et al.:

2ND Dept. App. Div. order of 10/16/13; affirmance with a two-Justice dissent;

COURTS - JURISDICTION - LONG-ARM JURISDICTION - WHETHER PERSONAL JURISDICTION OVER FLORIDA DEFENDANTS EXISTS UNDER CPLR 302(a)(1); Supreme Court, Westchester County, granted that branch of the defendants' motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction under CPLR 302; App. Div. affirmed.

SORRENTINO, MATTER OF v FISCHER:

3RD Dept. App. Div. judgment of 5/16/13; annulment of agency determination; sua sponte examination whether the appeal has been rendered moot;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - RIGHT TO CALL WITNESSES VIOLATED - WHETHER EXPUNGEMENT, RATHER THAN REMITTAL FOR A NEW HEARING, IS THE PROPER REMEDY;

App. Div. annulled a determination of respondent finding petitioner guilty of violating a prison disciplinary rule.