

COURT OF APPEALS NEW FILINGS

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

**November 29, 2013 through December 5, 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.**

CAROSELLI, MATTER OF v MARRUS:

2<sup>ND</sup> Dept. App. Div. judgment of 11/6/13; dismissal of proceeding; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - WHEN REMEDY AVAILABLE - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT PETITIONER FAILED TO DEMONSTRATE A CLEAR LEGAL RIGHT TO THE RELIEF SOUGHT;

App. Div. granted petitioner's application for poor person relief to the extent of waiving the filing fee, otherwise denied the application, denied the CPLR article 78 petition in the nature of mandamus to compel a Supreme Court Justice to vacate an order denying the petitioner's CPL 440 motion to vacate a judgment of conviction, and dismissed the proceeding.

DEMPSEY, MATTER OF v NEW YORK CITY DEPARTMENT OF  
EDUCATION et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/16/13; reversal; leave to appeal granted by App. Div., 11/12/13; Rule 500.11 review pending; CIVIL RIGHTS - WHETHER DETERMINATION DENYING APPLICATION FOR CERTIFICATION AS A SCHOOL BUS DRIVER WAS ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION OR CONTRARY TO LAW; Supreme Court, New York County, granted a CPLR article 78 petition to the extent of annulling respondent Department of Education's (DOE) determination, which denied petitioner's request for certification as a school bus driver, ordering that the DOE approve petitioner's application to be a certified DOE school bus driver, and remanding the remaining issues to the DOE; App. Div. reversed, denied the petition and dismissed the proceeding.

K.Y.W. ENTERPRISE CORP. v KIM:

1<sup>ST</sup> Dept. App. Div. order of 10/15/13; denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the action within the meaning of the Constitution; LANDLORD AND TENANT - RENT REGULATION - CLAIMED VIOLATION OF LANDLORD'S RIGHT TO A JURY TRIAL OF ITS HOLDOVER PROCEEDING IN HOUSING COURT; APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR LEAVE TO APPEAL FROM AN APPELLATE TERM ORDER; Civil Court of the City of New York, New York County, granted tenants' motion to dismiss the holdover petition and for Rule 130 sanctions, and denied as moot landlord's cross motion for summary judgment; App Term affirmed; App. Div. denied appellant's motion for leave to appeal to the App. Div. from a 5/29/13 App. Term order.

O'BRIEN, MATTER OF v NEW YORK STATE COMMISSIONER OF  
EDUCATION et al.:

3<sup>RD</sup> Dept. App. Div. order of 11/7/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; BONDS - SCHOOL DISTRICT'S APPROVAL OF BOND RESOLUTION TO FINANCE A FACILITIES PROJECT - WHETHER THE FACILITIES PROJECT AND BOND RESOLUTION VIOLATE THE SCHOOL DISTRICT'S CONSTITUTIONAL AND STATUTORY DEBT LIMIT - LOCAL FINANCE LAW § 104.00 - NEW YORK CONSTITUTION, ARTICLE VIII, § 4; SCHOOL DISTRICT'S NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) - WHETHER PETITIONER HAS STANDING TO CHALLENGE THE SCHOOL DISTRICT'S SEQRA DETERMINATION AND PROCESS; Supreme Court, Albany County, dismissed petitioner's application, in a CPLR article 78 proceeding, to review, among other things, a determination of respondent Commissioner of Education dismissing

petitioner's challenge to a certain facilities project undertaken by respondent City School District of the City of Corning; App. Div. affirmed.

PREFERRED MUTUAL INSURANCE COMPANY v DONNELLY, et al.:

4<sup>TH</sup> Dept. App. Div. order of 11/18/13; affirmance with dissents; Rule 500.11 review pending;

INSURANCE - COVERAGE - DEFENSE AND INDEMNIFICATION IN UNDERLYING PERSONAL INJURY ACTION - LANDLORD'S INSURANCE POLICY - WHETHER PLAINTIFF INSURER MET ITS INITIAL BURDEN OF ESTABLISHING THAT THE LEAD POISONING EXCLUSION WAS PROPERLY ADDED TO THE SUBJECT POLICY AND THAT NOTICE OF THE AMENDMENT WAS PROVIDED TO THE INSURED; SUMMARY JUDGMENT;

Supreme Court, Oneida County, among other things, granted plaintiffs' motion insofar as it sought summary judgment declaring that plaintiff has no duty to defend or indemnify its insured, defendant Donnelly, in a personal injury action commenced by defendant Jackson against Donnelly and others; App. Div. affirmed.

TRUMP VILLAGE SECTION 3, INC. v CITY OF NEW YORK, et al.:

2<sup>ND</sup> Dept. App. Div. order of 9/18/13; reversal; leave to appeal granted by App. Div., 11/18/13;

TAXATION - REAL PROPERTY TRANSFER GAINS TAX - APPLICABILITY OF TAX TO RESIDENTIAL COOPERATIVE CORPORATION UPON THE BASIS THAT A TAXABLE TRANSFER OR CONVEYANCE OF REAL PROPERTY OCCURRED WHEN THE CORPORATION VOLUNTARILY DISSOLVED ITSELF, TERMINATED ITS PARTICIPATION IN THE MITCHELL-LAMA HOUSING PROGRAM AND RECONSTITUTED ITSELF AS A FOR-PROFIT COOPERATIVE BY AMENDING ITS CERTIFICATE OF INCORPORATION, BYLAWS AND STANDARD OCCUPANCY AGREEMENT; STATUTE OF LIMITATIONS - WHETHER THE DECLARATORY JUDGMENT ACTION IS TIME-BARRED;

Supreme Court, Kings County, in an action by plaintiff Trump Village Section 3, Inc. for, among other things, a judgment declaring that the real property tax imposed by Tax Law § 1201(b) and Administrative Code of City of New York § 11-2102(a) was improperly imposed upon it, denied that branch of plaintiff's cross motion which was for summary judgment declaring that the real property transfer tax was improperly imposed upon it, and, upon searching the record, awarded summary judgment to defendants declaring that the real property transfer tax was properly imposed upon plaintiff; App. Div., upon granting a motion and cross motion to amend an opinion and order of that court dated 10/3/12, and recalling and vacating that opinion and order, reversed, granted that branch of plaintiff's cross motion which was for summary judgment declaring that the real property transfer tax imposed by Tax Law § 1201(b) and Administrative Code of the City of New York § 11-2102(a) was improperly imposed, and remitted the matter to Supreme Court for entry of a judgment declaring that the real property transfer tax was improperly imposed upon plaintiff.