

COURT OF APPEALS NEW FILINGS

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

**February 7, 2014 through February 13, 2014**

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.**

CATALANO, et al. v TANNER, &c.:

4<sup>TH</sup> Dept. App. Div. order of 12/27/13; reversal with dissents;  
Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - DEFECTIVE RESTAURANT CHAIR  
- NOTICE OF DEFECTIVE CONDITION - CONSTRUCTIVE NOTICE -  
REASONABLENESS OF DEFENDANT'S INSPECTION PRACTICES; RES IPSA  
LOQUITUR - LACK OF EXCLUSIVE CONTROL OF CHAIR; SUMMARY JUDGMENT;  
Supreme Court, Erie County, denied defendant's motion for summary  
judgment dismissing the complaint; App. Div. reversed, granted  
defendant's motion and dismissed the complaint.

CULLEN (WILLIAM), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 10/4/13; affirmance; leave to appeal granted by Lippman, Ch.J., 1/24/14;

CRIMES - WITNESSES - PRIOR CONSISTENT STATEMENT - WHETHER WITNESSES' STATEMENTS CONCERNING THE VICTIM'S PRIOR CONSISTENT STATEMENTS CONSTITUTED IMPROPER BOLSTERING; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; PROOF OF OTHER CRIMES - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE CHALLENGED EVIDENCE WAS PROPERLY ADMITTED BECAUSE IT PLACED THE CHARGED CONDUCT IN CONTEXT AND PROVIDED NECESSARY BACKGROUND INFORMATION ON THE NATURE OF THE RELATIONSHIP BETWEEN DEFENDANT AND THE VICTIM;

Supreme Court, Onondaga County, convicted defendant, upon a jury verdict, of two counts of rape in the second degree, criminal sexual act in the second degree and three counts of incest in the second degree; App. Div. affirmed.

MITCHELL v NEW YORK UNIVERSITY, et al.:

Supreme Court, New York County order of 1/14/14; grant of motion to dismiss; sua sponte examination whether the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the Constitution of the state or of the United States;

MOTIONS AND ORDERS - CHALLENGE TO ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AS TIME-BARRED TO THE EXTENT IT CHALLENGED DEFENDANT UNIVERSITY'S DECISION TO BAR PLAINTIFF FROM THE UNIVERSITY AND FOR FAILING TO STATE A CAUSE OF ACTION FOR DEFAMATION, ASSAULT, BATTERY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, FALSE IMPRISONMENT, NEGLIGENCE, VIOLATION OF FIRST AMENDMENT RIGHTS, UNJUST ENRICHMENT AND FRONT PAY;

Supreme Court, New York County, granted defendants' motion to dismiss the complaint as time-barred and/or for failure to state a cause of action, and denied plaintiff's cross motion for a default judgment.

NICHOLSON v INCORPORATED VILLAGE OF GARDEN CITY:

2<sup>ND</sup> Dept. App. Div. order of 12/26/13; reversal; sua sponte examination whether the order appealed from, which remits this matter to Supreme Court "for further proceedings, including the entry of a judgment," finally determines the action/proceeding within the meaning of the Constitution, and whether a substantial constitutional question is directly involved to support an appeal as of right;

LOCAL LAWS - VALIDITY - CONSTITUTIONALITY OF REGULATION REZONING CORNER LOTS ON FOUR AVENUES IN VILLAGE;

Supreme Court, Nassau County, in a hybrid action for a judgment declaring, among other things, that Local Law 4-2009 of the Village of Garden City is unconstitutional and proceeding pursuant to CPLR article 78 to review a determination of the

Board of Trustees of Incorporated Village of Garden City, dated August 13, 2009, resolving to enact Local Law 4-2009 of the Village of Garden City, denied that branch of defendants/respondents' motion which was for summary judgment, in effect, declaring that Local Law 4-2009 is not unconstitutional, and granted that branch of the plaintiffs/petitioners' cross motion which was for summary judgment, in effect, declaring that Local Law 4-2009 of the Village of Garden City is unconstitutional; App. Div. reversed the order insofar as appealed from, granted that branch of defendants' motion which was for summary judgment, in effect, declaring that Local Law 4-2009 of the Village of Garden City is not unconstitutional, denied that branch of plaintiffs' motion which was for summary judgment, in effect, declaring that Local Law 4-2009 of the Village of Garden City is unconstitutional, and remitted the matter to Supreme Court for further proceedings, including the entry of a judgment, among other things, declaring that Local Law 4-2009 of the Village of Garden City is not unconstitutional.

ROBLES v NEW YORK CITY HOUSING AUTHORITY:

1<sup>ST</sup> Dept. App. Div. order of 1/14/14; reversal with dissents;  
Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - TRIP AND FALL - NOTICE OF CLAIM - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEFENDANT WAS ENTITLED TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT BECAUSE THE NOTICE OF CLAIM DID NOT DESCRIBE THE LOCATION OF THE ALLEGED DEFECT WITH SUFFICIENT PARTICULARITY, PLAINTIFF GAVE CONTRADICTORY VERSIONS OF THE ACCIDENT LOCATION AND DID NOT ADVISE DEFENDANT OF THE REVISED LOCATION UNTIL MORE THAN THREE YEARS AFTER THE ALLEGED ACCIDENT, AND THE AFFIDAVITS PLAINTIFF SUBMITTED IN OPPOSITION TO THE MOTION DID NOT RAISE AN ISSUE OF FACT;

Supreme Court, New York County, denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendants' motion, and directed the clerk to enter judgment dismissing the complaint.