

COURT OF APPEALS NEW FILINGS

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

February 14, 2014 through February 20, 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.

BARRETO v METROPOLITAN TRANSPORTATION AUTHORITY:

1ST Dept. App. Div. order of 10/31/13; affirmance; leave to appeal granted by App. Div., 2/11/14;
LABOR - SAFE PLACE TO WORK - FALL INTO UNCOVERED MANHOLE - WHETHER DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S LABOR LAW § 240(1) CLAIM UPON THE GROUND THAT HIS FAILURE TO COVER THE MANHOLE AS DIRECTED WAS THE SOLE PROXIMATE CAUSE OF HIS INJURIES; PROPRIETY OF SUMMARY JUDGMENT DISMISSING CLAIMS FOR COMMON-LAW NEGLIGENCE AND FOR VIOLATIONS OF LABOR LAW §§ 200 AND 241(6);

Supreme Court, New York County, granted summary judgment dismissing the complaint as against defendant IMS Safety, Inc., dismissing the complaint and all cross claims as asserted against defendants Metropolitan Transportation Authority and New York City Transit Authority, and dismissing the complaint and all claims as asserted against defendant City of New York; and denied plaintiff's cross motion for partial summary judgment as against defendant IMS on his common-law negligence and Labor Law §§ 200, 240(1) and 241(6) claims as against IMS and for partial summary judgment against defendants Metropolitan Transportation Authority, New York City Transit Authority and the City of New York on his claim as against them under Labor Law § 240(1); App. Div. affirmed.

ELMALIACH, &c., et al. v BANK OF CHINA LIMITED, &c.:

1ST Dept. App. Div. order of 9/17/13; affirmance; leave to appeal granted by App. Div., 2/6/14;

CONFLICT OF LAWS - WHAT LAW GOVERNS - ACTION AGAINST CHINESE BANK BY ISRAELI NATIONALS - NEGLIGENCE CLAIM ARISING OUT OF ALLEGED ACTS THAT ENABLED TWO TERRORIST ORGANIZATIONS TO PLAN, PREPARE AND UNDERTAKE ACTS OF TERRORISM IN ISRAEL - INTEREST ANALYSIS - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT THE SUBSTANTIVE LAW OF ISRAEL APPLIED; BANKS AND BANKING - NEGLIGENCE - ISRAELI LAW - PROHIBITION AGAINST AIDING TERRORIST ORGANIZATIONS;

Supreme Court, New York County, denied defendant's motion to dismiss the complaint; App. Div. affirmed.

MATTER OF DUNN, AN ATTORNEY:

3RD Dept. App. Div. order of 11/7/13; censure of attorney; leave to appeal granted by Court of Appeals, 2/18/14;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CENSURE; COLLATERAL ESTOPPEL - WHETHER THE APPELLATE DIVISION PROPERLY GAVE COLLATERAL ESTOPPEL EFFECT TO A SANCTIONS DECISION BY A UNITED STATES MAGISTRATE JUDGE WHICH IS NOT SUBJECT TO REVIEW IN THE FEDERAL COURT SYSTEM UNTIL THE UNDERLYING FEDERAL ACTION IS CONCLUDED;

App. Div. found respondent guilty of the professional misconduct charged in the petition and censured her.

FLANDERS (PERNELL A.), PEOPLE v:

4TH Dept. App. Div. order of 11/8/13; affirmance; leave to appeal granted by Sconiers, J., 1/28/14;

CRIMES - JURORS - JURY INSTRUCTIONS - CLAIM THAT TRIAL COURT'S INSTRUCTION TO THE JURY CONSTRUCTIVELY AMENDED THE INDICTMENT, RENDERING IT DUPLICITOUS; MULTIPLE SHOTS FIRED FROM TWO FIREARMS; CONTINUING OFFENSE; WHETHER SHELL CASINGS WERE PROPERLY ADMITTED INTO EVIDENCE; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL; CLAIMED EXCESSIVE SENTENCE;

Vol. 34 - No. 8

Page 3

County Court, Oneida County, convicted defendant, upon a jury

verdict, of attempted murder in the second degree, assault in the first degree, criminal possession of a weapon in the second degree and reckless endangerment in the first degree; App. div. affirmed.

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., &c., et al., MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 12/3/13; reversal with dissents; INJUNCTIONS - PRELIMINARY INJUNCTION - WHETHER PETITIONERS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE MERITS OF THE CLAIM TO BE ARBITRATED - WHETHER ARBITRATION AWARD IN PETITIONERS' FAVOR WOULD BE RENDERED INEFFECTUAL WITHOUT PROVISIONAL RELIEF; Supreme Court, New York County, granted the petition for a preliminary injunction enjoining respondents from denying or revoking "Release Time" to the individual petitioners, pending resolution of arbitration proceedings; App. Div. reversed, vacated the judgment, denied the petition and dismissed the proceeding.

PLATEK v ALLSTATE INDEMNITY COMPANY:

Supreme Court, Erie County, judgment of 1/14/14, bringing up for review a 4TH Dept. App. Div. order of 7/6/12; modification with dissents; INSURANCE - EXCLUSIONS - WATER DAMAGE - EXCEPTION FOR "EXPLOSION" - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE "EXPLOSION" EXCEPTION WAS AMBIGUOUS AND, THUS, HAD TO BE CONSTRUED IN FAVOR OF THE INSURED; Supreme Court, Erie County, granted plaintiffs' motion for summary judgment, declared that plaintiffs' loss is covered by the subject insurance policy, directed defendant Allstate Indemnity Company to pay plaintiffs' claim and denied Allstate's cross motion for summary judgment dismissing the complaint against it; App. Div. modified by vacating the declaration; Supreme Court severed the claims against defendant Allstate, and subsequently awarded plaintiffs damages in the sum of \$110,000 based on the parties' stipulation.

RODRIGUEZ, MATTER OF v LaVALLEY:

3RD Dept. App. Div. order of 12/26/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - WHEN REMEDY AVAILABLE - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING JUDGMENT DISMISSING CPLR ARTICLE 78 PETITION CHALLENGING PETITIONER'S UNDERLYING CONVICTION; Supreme Court, Clinton County, dismissed the petition; App. Div. affirmed.

Vol. 34 - No. 8
Page 4

YOHANAN, MATTER OF v KING:

3RD Dept. App. Div. order of 1/23/14; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PHYSICIANS AND SURGEONS - DENTISTS - DISCIPLINARY PROCEEDINGS - ALLEGED VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS AS A RESULT OF (1) THE REGENTS REVIEW COMMITTEE'S NOT PROVIDING A COPY OF ITS REPORT AND RECOMMENDATIONS TO THE PETITIONER BEFORE THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK CONSIDERED THE MATTER AND (2) THE BOARD OF REGENTS' FAILURE TO PROVIDE PETITIONER WITH REPORTS AND INFORMATION CONCERNING PENALTIES IMPOSED IN OTHER DISCIPLINARY PROCEEDINGS - CHALLENGE TO PENALTY OF REVOCATION AS SO DISPROPORTIONATE TO THE OFFENSE AS TO SHOCK ONE'S SENSE OF FAIRNESS;

App. Div. confirmed the determination of respondent Board of Regents of the University of the State of New York that revoked petitioner's license to practice dentistry in New York, and dismissed the CPLR article 78 petition.