

COURT OF APPEALS NEW FILINGS

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

March 21, 2014 through March 27, 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.

ASHMORE, &c. v LEWIS:

1ST Dept. App. Div. order of 12/17/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PHYSICIANS AND SURGEONS - MALPRACTICE - COURT-APPOINTED EXPERT - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING JUDGMENT DISMISSING A COMPLAINT FOR MALPRACTICE OR NEGLIGENCE AGAINST A PSYCHOLOGIST APPOINTED BY COURT AS THE NEUTRAL FORENSIC EVALUATOR IN AN UNDERLYING CUSTODY PROCEEDING BASED UPON JUDICIAL IMMUNITY; Supreme Court, New York County, granted defendant's motion pursuant to CPLR 3211(a) to dismiss the complaint, and dismissed the complaint; App. Div. affirmed.

BOYD, MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

1ST Dept. App. Div. order of 10/31/13; reversal; leave to appeal granted by App. Div., 3/6/14; Rule 500.11 review pending; LANDLORD AND TENANT - RENT REGULATION - ASCERTAINING BASE DATE RENT WHERE FRAUD ALLEGED - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT PETITIONER MADE A SUFFICIENT SHOWING OF FRAUD TO REQUIRE THE NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR) TO INVESTIGATE THE LEGALITY OF THE BASE DATE RENT; WHETHER THE APPELLATE DIVISION ERRED IN RULING THAT DHCR ACTED WITHIN ITS DISCRETION BY RESOLVING THE PETITION FOR ADMINISTRATIVE REVIEW ON ITS MERITS EVEN THOUGH IT WAS FILED AFTER THE 35-DAY STATUTORY TIME FRAME (9 NYCRR 2529.2) AMENDMENT OF A CAPTION;

Supreme Court, New York County, denied the petition and dismissed the proceeding brought pursuant to CPLR article 78 to annul the 7/9/11 determination of respondent DHCR which denied petitioner's rent overcharge complaint; App. Div. reversed, vacated the judgment and remanded the matter to DHCR for further proceedings consistent with that court's order.

DIACK (MICHAEL), PEOPLE v:

App. Term, 9th and 10th Judicial Districts, order of 9/5/13; reversal; leave to appeal granted by Read, J., 3/5/14; CRIMES - SEX OFFENDER - WHETHER NASSAU COUNTY LOCAL LAW 4-2006, WHICH, AMONG OTHER THINGS, PROHIBITS A REGISTERED SEX OFFENDER FROM RESIDING WITHIN ONE THOUSAND FEET OF A SCHOOL, IS PREEMPTED BY NEW YORK STATE SEX OFFENDER MANAGEMENT LAWS;

District Court of Nassau County, First District, granted defendant's motion to dismiss the information charging him with violating Nassau County Local Law 4-2006, which, among other things, prohibits a registered sex offender from residing within one thousand feet of a school; App. Term reversed, denied defendant's motion to dismiss the information, and remitted the matter to the District Court for further proceedings.

GUTHRIE (REBECCA), PEOPLE v:

County Court, Wayne County, order of 7/22/13; affirmance; leave to appeal granted by Read, J., 3/5/14; CRIMES - FAILURE TO STOP AT A STOP SIGN - WHETHER A POLICE OFFICER'S REASONABLE BELIEF THAT DEFENDANT HAD RUN A STOP SIGN PROVIDED PROBABLE CAUSE FOR A TRAFFIC STOP, EVEN THOUGH THE STOP SIGN WAS NOT AUTHORIZED; DRIVING WHILE INTOXICATED - WHETHER THE "FRUIT OF THE POISONOUS TREE" DOCTRINE REQUIRES SUPPRESSION OF BLOOD-ALCOHOL EVIDENCE OBTAINED AS A RESULT OF A TRAFFIC STOP BASED UPON DEFENDANT'S FAILURE TO STOP AT AN UNAUTHORIZED STOP SIGN;

Newark Village Court dismissed charges that defendant failed to stop at a stop sign in violation of VTL § 1172(a) and was driving while intoxicated in violation of VTL § 1192(2) and (3); County Court affirmed.

JONES, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 2/13/14 and judgment of 10/24/13; denial of motion and partial dismissal of petition; sua sponte examination whether the order and judgment appealed from finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION JUDGMENT RESOLVING FIVE ADMINISTRATIVE DETERMINATIONS AND TO APPELLATE DIVISION ORDER DENYING MOTIONS FOR POOR PERSON RELIEF AND AN EXTENSION OF TIME TO MOVE FOR PERMISSION TO APPEAL TO THE COURT OF APPEALS; App. Div. granted petition to the extent of annulling a 5/3/12 disciplinary determination, and remitted to the Superintendent of Coxsackie Correctional Facility for further proceedings not inconsistent with the court's decision, and confirmed four other determinations and dismissed the petition to that extent; App. Div. then denied petitioner's motion for an extension of time to move for permission to appeal to the Court of Appeals and petitioner's motion to proceed as a poor person and for assignment of counsel.

JONES, PEOPLE ex rel. v MARTUSCELLO:

3RD Dept. App. Div. orders of 2/21/14 and 11/27/13; affirmance and denial of motions; sua sponte examination whether the 11/27/13 and 2/21/14 App. Div. orders finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right from the 11/27/13 App. Div. order; HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING DENIAL OF PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS AND TO APPELLATE DIVISION ORDERS THAT DENIED MOTIONS FOR A PRELIMINARY INJUNCTION, POOR PERSON RELIEF AND LEAVE TO APPEAL TO THE COURT OF APPEALS; Supreme Court, Greene County, denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing; App. Div. affirmed and then denied petitioner's motions for a preliminary injunction, permission to appeal to the Court of Appeals, permission to proceed as a poor person and assignment of counsel.

MANOUEL, MATTER OF, et al. v BOARD OF ASSESSORS, et al.:

2ND Dept. App. Div. order of 11/13/13; affirmance; leave to appeal granted by Court of Appeals, 2/20/14; TAXATION - ASSESSMENT - SMALL CLAIMS ASSESSMENT REVIEW (SCAR) (RPTL ARTICLE 7) - REQUIREMENT THAT PROPERTY BE "OWNER-OCCUPIED" - WHETHER NON-OCCUPYING OWNERS OF A SINGLE-FAMILY HOUSE MAY CHALLENGE A TAX ASSESSMENT IN A SCAR PROCEEDING WHERE THE HOUSE IS OCCUPIED ON A RENT-FREE BASIS BY ONE OF THEIR MOTHERS;

Supreme Court, Nassau County, among other things, denied a CPLR article 7 petition challenging a determination of a Small Claims Tax Assessment hearing officer which had denied petitioners' application for small claims assessment review pursuant to RPTL article 7, and dismissed the proceeding; App. Div. affirmed.

McNULTY, et al., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.:

3RD Dept. App. Div. judgment of 11/17/13; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - PERSONAL INCOME TAX - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE TAX APPEALS TRIBUNAL DETERMINATION THAT PETITIONERS, WHO WERE OWED REFUNDS FOR CERTAIN TAX YEARS, WERE NOT ENTITLED TO INTEREST OWED THE REFUNDS FROM THE DATES THE ORIGINAL RETURNS WERE FILED, BUT ONLY FROM THE DATES THE AMENDED RETURNS WERE FILED; CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS RELATED TO INTEREST CALCULATIONS AND TREATMENT OF OVERPAYMENTS AND UNDERPAYMENTS IN VARIOUS TAX YEARS;

App. Div. confirmed determination of respondent Tax Appeals Tribunal which denied petitioners' requests for additional interest on certain refunds of personal income tax imposed under Tax Law article 22, and dismissed the CPLR article 78 petition.

MURPHY, MATTER OF v CITY OF NEW YORK:

2ND Dept. App. Div. order of 1/8/14; affirmance;

JUDGMENTS - RES JUDICATA - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUPREME COURT PROPERLY DENIED PETITIONER'S MOTION TO RESUBMIT HIS WHISTLE-BLOWER CLAIM PURSUANT TO CIVIL SERVICE LAW § 75-b BECAUSE THE CLAIM IS BARRED BY THE DOCTRINE OF RES JUDICATA; PROPRIETY OF ORDER PROHIBITING PETITIONER FROM FILING FURTHER MOTIONS OR OTHER PAPERS WITHOUT PRIOR WRITTEN PERMISSION OF SUPREME COURT;

Supreme Court, Rockland County, denied petitioner's motion to resubmit his claim pursuant to Civil Service Law § 75-b and granted respondent's cross motion to prohibit petitioner from filing any further motions or papers without prior written permission of Supreme Court; App. Div. affirmed.

THOMAS (PATRICK), PEOPLE v:

1ST Dept. App. Div. order of 1/16/14; reversal; leave to appeal granted by Saxe, J., 2/27/14;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE POLICE DID NOT HAVE A REASONABLE SUSPICION THAT DEFENDANT WAS INVOLVED IN A CRIME;

Supreme Court, New York County, convicted defendant of grand larceny in the third and fourth degrees and fraudulent accosting, and sentenced him, as a second felony offender, to an aggregate term of 3 1/2 to 7 years; App. Div. reversed, granted the motion to suppress the out-of-court identification and property seized from defendant, and remanded the matter for a new trial preceded by an independent source hearing.