

COURT OF APPEALS NEW FILINGS

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

April 4, 2014 through April 10, 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.

AMALGAMATED BANK v HELMSLEY-SPEAR, et al.:

1ST Dept. App. Div. order of 8/13/13; reversal; leave to appeal granted by Court of Appeals, 3/27/14;

JUDGMENTS - DEFAULT JUDGMENT - VACATUR - WHETHER DEFENDANTS SUED AS RECIPIENTS OF A FRAUDULENT TRANSFER MAY MOVE TO VACATE A DEFAULT JUDGMENT ENTERED IN A SEPARATE ACTION AGAINST THE ALLEGEDLY FRAUDULENT TRANSFEROR, WITHOUT SHOWING THAT THE DEFAULT JUDGMENT WAS OBTAINED THROUGH FRAUD OR OTHER WRONGDOING;

Supreme Court, New York County, granted the motion of intervenors-defendants Schneider & Schneider, Inc. and Lynn Schneider to intervene and to vacate a default judgment against defendant Helmsley-Spear, Inc. in the principal amount of \$2,363,542.66; App. Div. reversed, denied the motion to intervene and vacate the default judgment, and reinstated the judgment.

BANOS, MATTER OF v RHEA, et al.:

2ND Dept. App. Div. order of 11/13/13; affirmance; leave to appeal granted by App. Div., 3/28/14;
LIMITATION OF ACTIONS - FOUR-MONTH STATUTE OF LIMITATIONS - CHALLENGE TO TERMINATION OF SECTION 8 SUBSIDY - WHETHER THE STATUTE OF LIMITATIONS BEGINS TO RUN UPON A SECTION 8 BENEFICIARY'S RECEIPT OF A NOTICE OF DEFAULT LETTER ONLY WHERE THE NEW YORK CITY HOUSING AUTHORITY STRICTLY COMPLIES WITH THE THREE-STEP NOTICE PROCEDURE SET FORTH IN THE FIRST PARTIAL CONSENT JUDGMENT IN WILLIAMS v NEW YORK CITY HOUSING AUTH. (SDNY 1984);

Supreme Court, Kings County, denied a motion by the New York City Housing Authority and its Chairman to dismiss the petition on the ground that the proceeding was time-barred; App. Div. affirmed.

BUILDING SERVICE LOCAL 32B-J PENSION FUND, et al. v 101 LIMITED PARTNERSHIP:

1ST Dept. App. Div. order of 3/11/14; modification with a two-justice dissent; sua sponte examination whether the order finally determines the action within the meaning of the Constitution;
LANDLORD AND TENANT - LEASE - UPKEEP CLAUSE REQUIRING TENANTS TO MAKE CERTAIN REPAIRS TO BUILDING - LANDLORD'S RIGHT TO PERFORM REPAIRS UPON TENANTS' DEFAULT - LANDLORD'S COUNTERCLAIM FOR DELAY DAMAGES; PRELIMINARY INJUNCTION PREVENTING LANDLORD FROM ENTERING PREMISES TO CURE ALLEGED REPAIR DEFAULT; PARTIAL SUMMARY JUDGMENT; INJUNCTION BOND;

Supreme Court, New York County, granted plaintiffs' motion for partial summary judgment dismissing defendant's counterclaim for delay damages and for an order dissolving the injunction bond posted by plaintiffs; App. Div. modified by denying that part of plaintiffs' motion seeking to dissolve the bond, and reinstating the bond.

GARCIA (RICHARD), PEOPLE v:

1ST Dept. App. Div. order of 1/28/14; modification; leave to appeal granted by Rivera, J., 4/2/14;
CRIMES - EVIDENCE - OUT-OF-COURT STATEMENT - WHETHER THE TRIAL COURT PROPERLY PERMITTED THE PEOPLE TO INTRODUCE EVIDENCE THAT THE VICTIM'S NONTESTIFYING SISTER TOLD A DETECTIVE THAT THE VICTIM HAD BEEN HAVING AN UNSPECIFIED "PROBLEM" WITH DEFENDANT, BECAUSE SUCH TESTIMONY WAS PRESENTED NOT FOR THE TRUTH OF THE MATTER ASSERTED, BUT TO EXPLAIN WHY THE POLICE FOCUSED ON DEFENDANT AND SPENT YEARS TRYING TO LOCATE HIM - ABSENCE OF A LIMITING INSTRUCTION - HARMLESS ERROR;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree, and sentenced him to a term of 20 years; App. Div. modified to the extent of reducing the amounts of the mandatory surcharge and crime victim assistance fee to \$250 and \$20, respectively, and otherwise affirmed.

LAMONT (JAFARI), PEOPLE v:

4TH Dept. App. Div. order of 1/3/14; affirmance; leave to appeal granted by Peradotto, J., 3/27/14;

CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE - ATTEMPTED ROBBERY IN THE SECOND DEGREE - WHETHER THE EVIDENCE IS SUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT DEFENDANT'S INTENT TO COMMIT ROBBERY;

County Court, Monroe County, convicted defendant, upon a jury verdict, of two counts of attempted robbery in the second degree; App. Div. affirmed.

WALKER v NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, et al.:

Supreme Court, New York County judgment of 12/18/13; denial of application; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CPLR ARTICLE 78 PROCEEDING FOR AN ORDER, AMONG OTHER THINGS, VACATING A DETERMINATION OF RESPONDENT NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT DISMISSING PETITIONER'S COMPLAINT ALLEGING JUDICIAL MISCONDUCT AGAINST FIVE JUSTICES OF THE APPELLATE DIVISION, SECOND DEPARTMENT; DISMISSAL OF PROCEEDING;

Supreme Court denied petitioner's application pursuant to CPLR article 78 to vacate a 7/1/13 determination of respondent Commission on Judicial Conduct, and dismissed the proceeding.