

COURT OF APPEALS NEW FILINGS

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

May 2, 2014 through May 8, 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.

DIAL, MATTER OF v RHEA, et al.:

2ND Dept. App. Div. order of 11/13/13; affirmance; leave to appeal granted by App. Div., 4/29/14;
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, granted a CPLR article 78 petition, annulled a determination terminating petitioner's benefits under section 8 of the United States Housing Act of 1937, directed reinstatement of petitioner's subsidy retroactive to 9/1/07, directed the payment of any rent subsidy amount that was not issued because of the termination, and denied motion by the Chairman of the New York City Housing Authority to dismiss the petition on the ground that the proceeding was time-barred; App. Div. affirmed.

KIMMEL v STATE OF NEW YORK et al.:

4TH Dept. App. Div. order of 3/28/14; affirmance; sua sponte examination whether the App. Div. order entered 3/28/14, which remitted the matter to Supreme Court to determine the amount of reasonable attorney's fees and disbursements to be awarded to plaintiff and her former counsel in defending the appeal, finally determines the action within the meaning of the Constitution; STATE - EQUAL ACCESS TO JUSTICE ACT (EAJA) (CPLR ARTICLE 86) - WHETHER PREVAILING PARTY IN A SEX DISCRIMINATION ACTION FOR MONEY DAMAGES AGAINST THE STATE IS ELIGIBLE TO RECOVER ATTORNEYS' FEES AND EXPENSES UNDER THE EAJA;

Supreme Court, Monroe County, denied those parts of the motions of plaintiff and her former counsel for attorneys' fees and expenses pursuant to CPLR article 86 and granted the motions of defendants to quash the subpoenas duces tecum issued to their attorneys; App. Div. reversed that part of the 5/18/09 Supreme Court order denying those parts of the motions of plaintiff and plaintiff's former counsel for attorneys' fees and expenses pursuant to the EAJA, denied defendants' motions to quash subpoenas duces tecum in part, directed defendants to produce only those documents pertaining to them, and remitted to Supreme Court to determine whether plaintiff and/or her former counsel are entitled to fees and expenses under the EAJA and, if so, the reasonable amount of those fees and expenses; Supreme Court awarded attorneys' fees and expenses to plaintiff and former counsel for plaintiff; App. Div. affirmed and remitted to Supreme Court to determine the amount of reasonable attorneys' fees and disbursements to be awarded to plaintiff and former counsel in defending the appeal.

RIDGE v GOLD, et al.:

4th Dept. App. Div. order of 3/21/14; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether any cross claims by or against defendant are pending;

ADMINISTRATIVE LAW - COLLATERAL ESTOPPEL - PRECLUSIVE EFFECT OF WORKERS' COMPENSATION BOARD FINDING AS TO CAUSAL RELATIONSHIP - IDENTITY OF ISSUE - WHETHER THE APPELLATE DIVISION ERRED IN AWARDING SUMMARY JUDGMENT TO DEFENDANT CONTRACTOR ON THE GROUND THAT THE WORKERS' COMPENSATION BOARD DETERMINED THAT NO ACCIDENT OCCURRED AND THAT SUCH DETERMINATION WAS ENTITLED TO COLLATERAL ESTOPPEL EFFECT;

Supreme Court, Erie County, denied defendant Braymiller's motion for summary judgment dismissing plaintiff's complaint and the separate motion by defendants Alice Gold and Susan Griesman for summary judgment dismissing plaintiff's complaint; App. Div. reversed the order insofar as appealed from, granted defendant Braymiller's motion for summary judgment dismissing plaintiff's complaint, and dismissed plaintiff's complaint as against Braymiller.

WISOFF v CITY OF SCHENECTADY, NEW YORK:

3RD Dept. App. Div. order of 4/10/14; affirmance; sua sponte examination whether so much of the App. Div. order as affirms the Supreme Court order denying plaintiff's motion for reconsideration finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; CONSTITUTIONAL LAW - VALIDITY OF ORDINANCE - WHETHER THE RENTAL CERTIFICATE ORDINANCE IN THE SCHENECTADY CITY CODE VIOLATES AN OWNER OF RENTAL PROPERTY'S RIGHT TO BE FREE FROM UNWARRANTED AND UNREASONABLE SEARCHES UNDER NY CONSTITUTION, ARTICLE 1, § 12; Supreme Court, Schenectady County, among other things, granted defendant's cross motion for summary judgment declaring the Rental Certificate Ordinance in the Code of the City of Schenectady constitutional under Article 1, section 12 of the New York State Constitution; Supreme Court then denied plaintiff's motion for reconsideration; App. Div. affirmed.

WRIGHT (HOWARD S.), PEOPLE v:

4TH Dept. App. Div. order of 3/21/14; affirmance with dissents; leave to appeal granted by Fahey, J., 4/28/14; CRIMES - MURDER - SUFFICIENCY OF EVIDENCE - WHETHER EVIDENCE IS SUFFICIENT TO ESTABLISH INTENTIONAL MURDER - CIRCUMSTANTIAL EVIDENCE; CLAIMED PROSECUTORIAL MISCONDUCT - STATEMENTS MADE BY PROSECUTOR DURING OPENING STATEMENT AND SUMMATION CONCERNING DNA EVIDENCE; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL - DEFENSE COUNSEL'S FAILURE TO OBJECT TO PROSECUTOR'S STATEMENTS; Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of murder in the second degree; App. Div. affirmed.