

COURT OF APPEALS NEW FILINGS

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

October 17, 2014 through October 23, 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.

ALVAREZ v NYLL MANAGEMENT LTD., et al.:

1ST Dept. App. Div. order of 9/11/14; affirmance with two-Justice dissent; Rule 500.11 review pending;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - WHETHER DEFENDANTS WERE ENTITLED TO SUMMARY JUDGMENT UPON THE GROUND THAT PLAINTIFF FAILED TO ESTABLISH THE EXISTENCE OF A MATERIAL ISSUE OF FACT THAT SHE SUSTAINED A SERIOUS INJURY WITHIN THE MEANING OF INSURANCE LAW § 5102(d);

Supreme Court, Bronx County, granted defendants' motion for summary judgment dismissing the complaint based on plaintiff's failure to establish a serious injury within the meaning of Insurance Law § 5102(d); App. Div. affirmed.

FLINTLOCK CONSTRUCTION SERVICES v WEISS:

1ST Dept. App. Div. order of 8/14/14; affirmance with two-Justice dissent;

ARBITRATION - DENIAL OF PETITION TO PERMANENTLY STAY ARBITRATION OF PUNITIVE DAMAGES CLAIM - WHETHER THE APPELLATE DIVISION CORRECTLY RULED THAT THE PETITION WAS PROPERLY DENIED UNDER MASTROBUONO v SHEARSON LEHMAN HUTTON (514 US 52 [1995]), WHERE THE RELEVANT AGREEMENTS PROVIDED FOR ARBITRATION PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION BECAUSE, UNDER THE FEDERAL ARBITRATION ACT, IT IS FOR THE ARBITRATORS, NOT THE COURTS, TO DETERMINE THE AVAILABILITY OF PUNITIVE DAMAGES IN THE ABSENCE OF LANGUAGE EXPRESSLY EXCLUDING CLAIMS FOR PUNITIVE DAMAGES, EVEN THOUGH THE AGREEMENTS PROVIDE FOR APPLICATION OF NEW YORK LAW AND THE PUBLIC POLICY OF NEW YORK PROHIBITS ARBITRATION OF PUNITIVE DAMAGES;

Supreme Court, New York County, denied the petition to stay arbitration of respondent's claims for punitive damages; App. Div. affirmed.

GENTIL, MATTER OF v MARGULIS, et al.:

2ND Dept. App. Div. order of 9/24/14; grant of petition; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CPLR ARTICLE 78 PROCEEDING TO PROHIBIT RESPONDENTS FROM RETRYING PETITIONER ON TWO COUNTS OF THE INDICTMENT IN PEOPLE v GENTIL ON THE GROUND THAT TO DO SO WOULD SUBJECT HIM TO DOUBLE JEOPARDY - TRIAL COURT DECLINED TO ACCEPT A PARTIAL VERDICT - DISCHARGE OF JUROR - MISTRIAL;

App. Div. granted the petition and prohibited respondents from retrying petitioner on counts two and three in the criminal action entitled People v Gentil.

JOHN (SEAN), PEOPLE v:

2ND Dept. App. Div. order of 8/6/14; affirmance; leave to appeal granted by Hall, J., 10/20/14; Rule 500.11 review pending; CRIMES - UNLAWFUL SEARCH AND SEIZURE - PLAIN VIEW DOCTRINE - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE POLICE VALIDLY SEIZED A BOX MARKED "SMITH AND WESSON" UNDER THE PLAIN VIEW DOCTRINE AND LAWFULLY OPENED THE BOX, WHICH CONTAINED A HANDGUN AND AMMUNITION, BECAUSE SUCH CONTENTS COULD BE INFERRED FROM THE "SMITH AND WESSON" MARKING ON THE OUTSIDE OF THE BOX - WARRRANTLESS ENTRY INTO BASEMENT OF BROWNSTONE - PROBABLE CAUSE TO OBTAIN DNA SAMPLE FROM DEFENDANT; EVIDENCE - WHETHER THE TRIAL COURT ERRED IN ALLOWING EVIDENCE OF DEFENDANT'S ALLEGED ASSAULT ON HIS GIRLFRIEND; ALLEGED PROSECUTORIAL MISCONDUCT IN SUMMATION; ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree and menacing in the second degree, and imposed sentence; App. Div. affirmed.

MERCADO (JEFFREY), PEOPLE v:

1ST Dept. App. Div. order of 8/28/14; affirmance; leave to appeal granted by Acosta, J., 10/16/14;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - SEARCH OF VEHICLE AND TRUNK - FOUNDED SUSPICION OF CRIMINALITY BASED UPON TOTALITY OF KNOWN CIRCUMSTANCES - VOLUNTARINESS OF CONSENT TO SEARCH OF VEHICLE AND TRUNK;

Supreme Court, New York County, convicted defendant of criminal possession of a controlled substance in the third degree, and sentenced him, as a second felony drug offender, to a term of 3 1/2 years; App. Div. affirmed.

SMITH (GLENN S.), PEOPLE v:

App. Term, 9th and 10th Judicial Districts, order of 3/10/14; reversal; leave to appeal granted by Rivera, J., 10/6/14;

CRIMES - APPEAL - WHETHER DEFENDANT WAS REQUIRED TO SUBMIT AN AFFIDAVIT OF ERRORS UPON TAKING AN APPEAL TO APPELLATE TERM, WHERE DEFENDANT PROVIDED AN ELECTRONIC RECORDING OF THE UNDERLYING PROCEEDING INSTEAD OF A STENOGRAPHIC TRANSCRIPTION - CPL 460.10(3);

Village of Goshen Justice Court, Orange County, convicted defendant, upon a jury verdict, of resisting arrest and disorderly conduct; App. Term reversed and dismissed the accusatory instrument.