

COURT OF APPEALS NEW FILINGS

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

**October 24, 2014 through October 30, 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.**

ECHEVARRIA, MATTER OF v WAMBUA, et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/1/14; reversal; leave to appeal granted by Court of Appeals, 10/21/14;

PARTIES - STANDING - CHALLENGE TO PUBLIC HOUSING OCCUPANCY WAIVER - WHETHER PETITIONER, AS HEAD OF A FIVE-PERSON HOUSEHOLD LIVING IN A TWO-BEDROOM APARTMENT, LACKED STANDING TO CHALLENGE THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S (HPD) WAIVER OF THE SIX-PERSON OCCUPANCY REQUIREMENT FOR A FOUR-BEDROOM APARTMENT IN A MITCHELL-LAMA BUILDING, WHERE THE WAIVER WAS GRANTED TO ANOTHER FIVE-PERSON FAMILY WHO FILED AN APPLICATION FOR THE APARTMENT, PETITIONER HAD NOT SUBMITTED AN APPLICATION, AND HPD LATER DETERMINED THAT IT DID NOT HAVE AUTHORITY TO GRANT SUCH A WAIVER;

Supreme Court, New York County, granted the CPLR article 78 petition to annul respondent Commissioner's determination to award an apartment to the Andermanis respondents, to the extent of remanding the matter to HPD; App. Div. reversed, denied the petition and the HPD's cross motion to remand, granted the cross motion to dismiss and dismissed the CPLR article 78 proceeding.

WALLY G., &c. v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION:

1<sup>ST</sup> Dept. App. Div. order of 9/18/14; affirmance with two-Justice dissent; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - LATE NOTICE - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT MEDICAL RECORDS DID NOT PUT HOSPITAL ON NOTICE OF ALLEGED MEDICAL MALPRACTICE BECAUSE INFANT'S CONDITION WAS CONSISTENT WITH PREMATURE BIRTH RATHER THAN MALPRACTICE;

Supreme Court, New York County, granted reargument and, upon reargument, adhered to its prior order, entered 1/26/12, which denied plaintiff's motion for leave to serve a late notice of claim and granted defendant's cross motion to dismiss the complaint; App. Div. affirmed.

JORDAN, &c. v JORDAN, et al.:

2<sup>ND</sup> Dept. App. Div. order of 8/20/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PARTIES - STANDING - WHETHER THE COURTS BELOW CORRECTLY HELD THAT PLAINTIFF LACKED STANDING TO BRING A SURVIVAL ACTION FOR PERSONAL INJURIES SUSTAINED BY A DECEDENT AND A WRONGFUL DEATH ACTION BECAUSE THE TEMPORARY LETTERS OF ADMINISTRATION ISSUED TO PLAINTIFF WERE REVOKED BEFORE COMMENCEMENT OF THIS ACTION;

Supreme Court, Kings County, granted defendant's motion, in effect, pursuant to CPLR 3211(a)(3) to dismiss the complaint for lack of standing; App. Div. affirmed.

MONROE EQUITIES LLC v STATE OF NEW YORK:

Court of Claims order of 10/1/14; dismissal of claim; sua sponte examination whether the only question involved in the appeal is the constitutional validity of a statutory provision;

CONSTITUTIONAL LAW - TAKING OF PROPERTY - REGULATION ENACTED PRIOR TO PURCHASE OF PROPERTY BY CLAIMANT - LIMITATION OF USES DUE TO REGULATION;

Court of Claims denied claimant's motion for summary judgment on the issue of liability and granted defendant's motion for summary judgment dismissing the claim.