

COURT OF APPEALS NEW FILINGS

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

**December 26, 2014 through January 1, 2015**

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.**

HENDERSON (WAYNE), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/25/14; reversal; leave to appeal granted by Smith, J., 12/16/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - SINGLE ERROR STANDARD - WHETHER TRIAL COUNSEL'S CLAIMED DEFICIENT PREPARATION OF AN EXPERT WITNESS DEPRIVED DEFENDANT OF MEANINGFUL REPRESENTATION;

Supreme Court, Queens County, convicted defendant of attempted murder in the second degree and two counts of assault in the first degree, upon a jury verdict, and imposed sentence; App. Div. reversed and ordered a new trial.

PAF-PAR LLC v SILBERBERG, et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/5/14; affirmance; leave to appeal granted by Court of Appeals, 12/16/14;

SURETYSHIP AND GUARANTEE - GUARANTEE OF PROMISSORY NOTE - BORROWER'S FULL PAYMENT OF MODIFIED LOAN AMOUNT - GUARANTOR NOT LIABLE FOR MORE - WHETHER THE GUARANTOR IS LIABLE FOR THE FULL ORIGINAL LOAN AMOUNT WHERE THE BORROWER SATISFIED ITS OBLIGATIONS UNDER A MODIFICATION AGREEMENT AND THE GUARANTY STATES THAT THE GUARANTOR'S OBLIGATIONS SHALL NOT BE AFFECTED BY "MODIFICATION, ALTERATION OR REARRANGEMENT";

Supreme Court, New York County, denied plaintiff's motion for summary judgment in lieu of complaint and granted defendants' cross motion to dismiss the complaint; App. Div. affirmed.

THOMPSON (FREDDIE), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/11/14; affirmance and modification; leave to appeal granted by Smith, J., 12/18/14; CRIMES - SENTENCE - RESENTENCE - WHETHER THE COURTS BELOW PROPERLY CALCULATED THE 10-YEAR LOOK-BACK PERIOD IN ADJUDICATING DEFENDANT A SECOND VIOLENT FELONY OFFENDER; WHETHER DEFENDANT WAS DEPRIVED OF A FAIR TRIAL BY COMMENTS MADE DURING SUMMATION; WHETHER SUPREME COURT ERRED IN DENYING DEFENDANT'S MOTION TO REOPEN THE WADE HEARING;

Supreme Court, Richmond County, (1) convicted defendant of two counts of robbery in the first degree and escape in the first degree, upon a jury verdict, and imposed sentence, and (2) resentenced defendant, as a second violent felony offender, to determinate terms of imprisonment of 20 years upon his convictions of robbery in the first degree, followed by five years of postrelease supervision, to run concurrently with each other and with an indeterminate term of 3 1/2 to 7 years imposed upon his conviction of escape in the first degree; App. Div. affirmed the judgment of conviction and sentence, and modified the resentence by reducing the determinate terms of imprisonment imposed upon the convictions of robbery in the first degree from 20 years to 15 years and, as so modified, affirmed the resentence.

TUNG, et al., MATTER OF v CHINA BUDDHIST ASSOCIATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/13/14; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - MEETINGS - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT THE ISSUES RAISED BY PETITIONERS ARE RELIGIOUS IN NATURE AND CANNOT BE DECIDED THROUGH THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW; CLAIMED FIRST AMENDMENT AND FOURTEENTH AMENDMENT VIOLATIONS;

Supreme Court, New York County, granted the petition to the extent of invalidating the China Buddhist Association's May 2011 meeting and directed that another general meeting be held with petitioners included; App. Div. reversed, vacated the order and dismissed the petition.