

COURT OF APPEALS NEW FILINGS

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

May 1, 2015 through May 7, 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.

CRP/EXTELL PARCEL I.L.P. v CUOMO, et al.:

1ST Dept. App. Div. order of 1/29/15; reversal; leave to appeal granted by App. Div., 4/28/15;

INTEREST - ACTIONS IN WHICH RECOVERABLE - DISMISSAL OF UNDERLYING PROCEEDING TO REFORM ALLEGED SCRIVENER'S ERROR IN CONDOMINIUM OFFERING - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUPREME COURT EXCEEDED ITS JURISDICTION BY DECIDING A MOTION FOR THE AWARD OF PREJUDGMENT INTEREST BECAUSE THE UNDERLYING REFORMATION ACTION/PROCEEDING HAD BEEN RESOLVED, RESPONDENTS IN THAT ACTION/PROCEEDING SOUGHT RELEASE OF FUNDS IN ESCROW PLUS INTEREST WHILE FUNDS WERE HELD IN ESCROW, AND RESPONDENTS DID NOT SEEK AN AWARD OF STATUTORY INTEREST IN THAT PRIOR ACTION/PROCEEDING;

Supreme Court, New York County, awarded respondents-purchasers 9 percent interest, with amounts specified for each purchaser, entered upon an order granting certain respondents' motion for, among other things, the award of statutory, prejudgment interest pursuant to CPLR 5001(a); App. Div. reversed, vacated the judgment and denied the motion.

PS 157 LOFTS LLC, et al. v AUSTIN, et al.

1ST Dept. App. Div. orders of 11/16/14 and 7/24/14, and 1ST Dept. App. Term order of 12/31/13;

PUBLIC HOUSING - SUCCESSION RIGHTS - TWO-YEAR RESIDENCY REQUIREMENT - CLAIMED IMPAIRMENT OF CONTRACT OBLIGATION; CLAIMED DEPRIVATION OF RIGHT TO JURY TRIAL; CLAIMED DUE PROCESS VIOLATION;

Civil Court of the City of New York, New York County, denied petitioner's motion for summary judgment on the holdover petition; App. Term reversed, granted petitioner's motion for summary judgment, and awarded final judgment in favor of petitioner on its cause of action for possession; App. Div. denied respondents' motion for leave to appeal to that court and, thereafter, denied respondents' motion for renewal and reargument or leave to appeal to the Court of Appeals.

ROBINSON, MATTER OF v PEOPLE OF THE STATE OF NEW YORK et al.:

1ST Dept. App. Div. judgment of 3/3/15; dismissal of petition; sua sponte examination whether a substantial constitutional question is directly involved;

PROCEEDING AGAINST A BODY OR OFFICER - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PETITIONER'S CPLR ARTICLE 78 APPLICATION; App. Div. denied petitioner's application pursuant to CPLR article 78 and dismissed the petition.

WILSON (CHARLES K.), PEOPLE v:

4th Dept. App. Div. order of 9/26/14; modification; leave to appeal granted by Pigott, J., 4/23/15;

CRIMES - CONFESSION - VOLUNTARY NATURE OF STATEMENTS - WHETHER THE PEOPLE SHOULD HAVE BEEN PRECLUDED FROM CROSS-EXAMINING DEFENDANT WITH STATEMENTS HE MADE TO POLICE AFTER INVOKING HIS MIRANDA RIGHTS - CLAIM THAT POLICE UNLAWFULLY CONTINUED TO QUESTION DEFENDANT KNOWING THAT HIS POST-MIRANDA STATEMENTS COULD BE USED FOR IMPEACHMENT PURPOSES; IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAY - INCLUSION OF SINGLE SUSPECT'S PHOTOGRAPH IN SUCCESSIVE ARRAYS - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT IDENTIFICATION EVIDENCE DID NOT HAVE TO BE SUPPRESSED WHERE DIFFERENT PHOTOGRAPHS OF DEFENDANT WERE USED IN EACH PHOTO ARRAY AND WERE PLACED IN A DIFFERENT LOCATION WITHIN EACH ARRAY, AND THE FILLERS WERE VERY SIMILAR IN APPEARANCE TO DEFENDANT;

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of attempted murder in the second degree, two counts of robbery in the first degree, three counts of burglary in the first degree, two counts of assault in the first degree, and assault in the second degree; App. Div. modified by reversing the part of the judgment that convicted defendant of attempted murder in the second degree and dismissing the ninth count of the amended indictment, and by directing that the sentences on the remaining counts shall run concurrently with respect to each other, and affirmed the judgment as modified.