

COURT OF APPEALS NEW FILINGS

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

May 8, 2015 through May 14, 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.

BRANSTEN, et al. v STATE OF NEW YORK:

Supreme Court, New York County judgment of 5/1/15; grant of summary judgment; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

JUDGES - JUDICIAL SALARIES - WHETHER APPLICATION TO PLAINTIFF JUDGES AND JUSTICES OF L. 2011, c. 491, § 2 AND AMENDED CIVIL SERVICE LAW § 167(8) VIOLATES THE COMPENSATION CLAUSE OF THE NEW YORK STATE CONSTITUTION;

Supreme Court, New York County, granted plaintiffs' motion for summary judgment on their complaint to the extent that it declared that L. 2011, c. 491, § 2 and the amended Civil Service Law § 167.8, including the regulations adopted thereunder, are unconstitutional as applied to the Judges and Justices of the Unified Court System because these statutes diminish compensation of all such Judges and Justices, and denied defendant's cross motion for summary judgment dismissing the complaint.

GUERIN (ZACHARY T.), PEOPLE v:

County Court, Cattaraugus County order of 5/30/14; affirmance; leave to appeal granted by Pigott, J., 4/8/15;
CRIMES - TRESPASSING - DEFENDANT TICKETED FOR WALKING ON POSTED LAND - DEFENDANT CHALLENGED TICKET ON GROUNDS THAT SIGNS POSTED WHERE HE WAS WALKING DID NOT COMPLY WITH ENVIRONMENTAL CONSERVATION LAW § 11-2111(2)'S REQUIREMENT THAT THE SIGN STATE THE NAME AND ADDRESS OF THE LAWFUL OWNERS OF THE LAND;
Persia Town Court convicted defendant of trespassing in violation of ECL § 11-2113(1); County Court affirmed.

HARRIS v THE UNION THEOLOGICAL SEMINARY IN THE CITY OF NEW YORK:

1ST Dept. App. Div. order of 4/7/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
JUDGMENTS - COLLATERAL ESTOPPEL - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT (1) PLAINTIFF WAS COLLATERALLY ESTOPPED FROM RELITIGATING THE ISSUE WHETHER DEFENDANT'S REASSIGNMENT OF HIS FACILITY HOUSING WAS ARBITRARY AND CAPRICIOUS AND NOT RATIONALLY BASED, (2) PLAINTIFF'S CHALLENGE TO THE TERMINATION OF HIS EMPLOYMENT SHOULD HAVE BEEN BROUGHT AS A CPLR ARTICLE 78 PROCEEDING AND WAS TIME-BARRED, AND (3) PLAINTIFF'S REMAINING ARGUMENTS WERE UNAVAILING - CONSTITUTIONAL CHALLENGE TO 4-MONTH STATUTE OF LIMITATIONS CONTAINED IN CPLR 217(1);
Supreme Court, New York County, granted defendant's motion to dismiss the cause of action for a declaratory judgment as to plaintiff's rights under a housing agreement and related relief; App. Div. affirmed.

JIANNARAS v ALFANT, et al.:

2ND Dept. App. Div. order of 1/14/15; affirmance; leave to appeal granted by App. Div., 5/8/15;
ACTIONS - CLASS ACTIONS - SETTLEMENT PURPORTING TO EXTINGUISH RIGHTS OF OUT-OF-STATE CLASS MEMBERS TO LITIGATE DAMAGES CLAIMS WITHOUT ABILITY TO OPT-OUT - WHETHER SUPREME COURT ABUSED ITS DISCRETION IN DENYING A MOTION TO APPROVE A SETTLEMENT OF THE PROPOSED CLASS ACTION BECAUSE IT DID NOT AFFORD NONRESIDENT CLASS MEMBERS THE OPPORTUNITY TO OPT-OUT AND PURSUE INDIVIDUAL CLAIMS FOR DAMAGES - APPLICATION OF MATTER OF COLT INDUS. SHAREHOLDERS LITIG. (77 NY2d 185 [1991]);

Supreme Court, Queens County, denied a motion made jointly by defendants and plaintiff-class representative to approve a settlement of a proposed non-opt-out class action; App. Div. affirmed.

SHERMAN v NEW YORK STATE THRUWAY AUTHORITY:

2ND Dept. App. Div. order of 8/27/14; reversal; leave to appeal granted by Court of Appeals, 5/7/15;

NEGLIGENCE - SNOW AND ICE - STORM IN PROGRESS - WHETHER DEFENDANT WAS ENTITLED TO SUMMARY JUDGMENT DISMISSING THE CLAIM UPON THE GROUND THAT THERE WAS A STORM IN PROGRESS WHEN PLAINTIFF SLIPPED AND FELL ON ICE - APPLICATION WHERE THERE IS NO LONGER ANY APPRECIABLE ACCUMULATION OF ICE OR SNOW WHEN ACCIDENT OCCURS;

Court of Claims denied defendant's motion for summary judgment dismissing the claim; App. Div. reversed the order insofar as appealed from and granted defendant's motion for summary judgment dismissing the claim.