

COURT OF APPEALS NEW FILINGS

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

**January 13, 2017 through January 19, 2017**

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.**

CONGEL, et al. v MALFITANO:

2<sup>ND</sup> Dept. App. Div. order of 5/18/16; modification; leave to appeal granted by Court of Appeals, 1/10/17;  
PARTNERSHIP - DISSOLUTION - WHETHER THE APPELLATE DIVISION ERRED IN FINDING A WRONGFUL DISSOLUTION OF THE PARTNERSHIP WHICH LACKED A DEFINITE TERM OR PARTICULAR UNDERTAKING (PARTNERSHIP LAW § 62), IN AWARDING COUNSEL AND EXPERT FEES AS PART OF THE DAMAGES, IN APPLYING MINORITY AND MARKETABILITY DISCOUNTS TO DEFENDANT'S PARTNERSHIP INTEREST, AND IN ATTRIBUTING GOODWILL TO THE PARTNERSHIP'S VALUE;

Supreme Court, Dutchess County, upon a 5/29/08 order granting those branches of plaintiffs' motion which were for summary judgment declaring that defendant wrongfully dissolved the Poughkeepsie Galleria Company Partnership and on the issue of liability on the cause of action alleging breach of contract, and upon a 9/27/12 decision, made after a nonjury trial on the issue of damages, declared that defendant wrongfully dissolved the partnership and breached the partnership agreement, and awarded defendant the principal sum of \$857,164.75; App. Div. modified by deleting the provision in favor of defendant and against plaintiffs in the principal sum of \$857,164.75; as so modified, affirmed the amended judgment insofar as appealed and cross-appealed from, and remitted the matter to Supreme Court for a new calculation of damages that incorporates a 66% minority discount applied to the value of defendant's interest in the partnership and for the entry of an appropriate second amended judgment; Supreme Court awarded plaintiffs \$911,287.78.

PESANTE v VERTICAL INDUSTRIAL DEVELOPMENT CORP., et al. (AND A THIRD-PARTY ACTION):

2<sup>ND</sup> Dept. App. Div. order of 8/24/16; reversal; leave to appeal granted by App. Div., 12/23/16; Rule 500.11 review pending; NEGLIGENCE - MAINTENANCE OF PREMISES - PLAINTIFF WALKING IN PARKING LOT STRUCK BY REMOTE-CONTROLLED TOY CAR - VICARIOUS LIABILITY OF PROPERTY OWNER AND MANAGING CONSULTANT FOR PROPERTY OWNER WHERE PARKING LOT WAS PATROLLED BY AN INDEPENDENT CONTRACTOR HIRED TO PROVIDE A SAFE AND SECURE ENVIRONMENT FOR VISITORS TO PARKING LOT; CONSTRUCTIVE NOTICE OF ALLEGED DANGEROUS CONDITION; SUMMARY JUDGMENT;

Supreme Court, Kings County, among other things, granted that branch of the motion of defendants Vertical Industrial Development Corp. and Rentar Development Corp. which was for summary judgment dismissing the complaint insofar as asserted against them; App. Div. reversed and denied that branch of the motion of defendants Vertical Industrial and Rentar Development which was for summary judgment dismissing the complaint insofar as asserted against them.

W. (TERI), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 9/29/16; affirmance; leave to appeal granted by DiFiore, Ch.J., 12/30/16; CRIMES - SENTENCE - YOUTHFUL OFFENDER - WHETHER SUPREME COURT LAWFULLY IMPOSED A 10-YEAR TERM OF PROBATION RATHER THAN A 5-YEAR TERM - WHETHER THE MAXIMUM PROBATIONARY TERM AUTHORIZED BY STATUTE FOR A YOUTHFUL OFFENDER CONVICTED OF A FELONY IS FIVE YEARS (PENAL LAW §§ 60.02[2]; 65.00[3][a][i]); Supreme Court, New York County, convicted defendant, upon her plea of guilty, of sexual abuse in the first degree, adjudicating her a youthful offender and sentencing her to a term of 10 years' probation; App. Div. affirmed.