

COURT OF APPEALS NEW FILINGS

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

January 19, 2018 through January 25, 2018

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.

ARROWHEAD CAPITAL FINANCE, LTD. v CHEYNE SPECIALITY FINANCE FUND L.P., et al.:

1ST Dept. App. Div. order of 10/17/17; affirmance; leave to appeal granted by Court of Appeals, 1/11/18;
Attorney and Client--Unauthorized Practice of Law--Whether failure of plaintiff's counsel to maintain an in-state office at the time action was commenced, in violation of Judiciary Law § 470, renders the action a nullity and requires dismissal of the action without prejudice;
Supreme Court, New York County, dismissed the complaint with prejudice as against defendant Cheyne Specialty Finance Fund General Partner and without prejudice as against defendant Cheyne Specialty Finance Fund; App. Div. affirmed.

ASENSIO, MATTER OF v MARKS, &c. (A.D. NO. 130/2017):

1ST Dept. App. Div. order of 1/4/18; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; Proceeding Against Body or Officer--Certiorari--Various constitutional claims arising out of judicial management of underlying Family Court matter; App. Div. denied petitioner's CPLR article 78 application and dismissed the petition.

DIMERY v ULSTER SAVINGS BANK; ULSTER SAVINGS BANK v DIMERY:

2nd Dept. App. Div. order of 9/13/17; denial of motion; sua sponte examination whether the order sought to be appealed from finally determines the action and proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; Appeal--Finality of Judgments and Orders--Finality of Appellate Division order denying a motion by a party to assign a new docket number in connection with a notice of appeal from a judgment that has already been appealed to the Appellate Division; Supreme Court, Putnam County, dismissed the complaint and found in favor of the defendant on its counterclaims, and awarded defendant damages representing unpaid rent and taxes for the plaintiff's occupancy of the subject premises after termination of the parties' joint venture agreement for the period from 4/1/91 through 10/1/00; App. Div. (12/27/04 order) modified the judgment by deleting therefrom (1) the eleventh decretal paragraph, awarding the defendant damages representing unpaid rent for the period from 4/1/91 through 10/1/00, and (2) the fourteenth decretal paragraph, awarding the defendant damages representing unpaid taxes for the period from 4/1/91 through 10/1/00; and as so modified, affirmed the judgment insofar as appealed from; App. Div. thereafter (9/13/17 order) denied plaintiff's motion to assign a new docket number in connection with a new notice of appeal dated 9/14/16 from 10/26/00 Supreme Court judgement.

QUIRK, &c., MATTER OF v LIPPMAN, &c.:

1ST Dept. App. Div. of 12/14/17; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; Civil Service--Compensation and Benefits--Whether members of the New York State Court Officers Association are entitled to salary adjustment that was provided to Suffolk County court officers under O'Neil v Pfau (23 NY3d 993 [2014]); limitation of actions--whether four-month statute of limitations had run on cause of action challenging administrative body's salary adjustments; alleged equal protection violation;

Supreme Court, New York County, denied the CPLR article 78 petition as time-barred to the extent it sought retroactive salary adjustments and granted the petition to the extent it sought "prospective relief"; App. Div. modified to deny the petition as time-barred as to "prospective relief," and otherwise affirmed and dismissed the proceeding.

WELLS FARGO BANK, N.A., &c. v SHATLES, &c., et al.:

2ND Dept. App. Div. order of 1/10/18; dismissal and affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Judgments--Default Judgment--Vacatur--Whether a defendant seeking to vacate a default based on allegation of intrinsic fraud by plaintiff must establish a reasonable excuse for the default and a potentially meritorious defense to the action; mortgage foreclosure; claimed due process violations and judicial errors; aggrievement;

Supreme Court, Suffolk County, among other things, denied that branch of defendant Robert Shatles' motion which was pursuant to CPLR 5015(a)(3) to vacate an 8/27/14 judgment of foreclosure and sale of that court, upon his failure to answer the complaint; App. Div. dismissed the appeal by defendant Brooke Shatles for lack of aggrievement, and affirmed the order insofar as appealed from by defendant Robert Shatles.

WOHLFEIL, MATTER OF v SHAREL VENTURES, LLC, et al.:

3RD Dept. App. Div. order of 11/16/17; reversal with dissents; Rule 500.11 review pending and sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Workers' Compensation--Extent of Disability--Whether substantial evidence supports the Workers' Compensation Board's determination that claimant sustained a permanent partial disability and a 75% loss of wage-earning capacity where medical testimony indicated that, as a result of her lumbar back injury, she is unable to perform even sedentary work as defined in the 2012 New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity;

App. Div. reversed a 10/29/15 decision of the Workers' Compensation Board which ruled that claimant sustained a permanent partial disability and a 75% loss of wage-earning capacity, and remitted the matter to the Board for further proceedings not inconsistent with the decision.

WRIGHT v STATE OF NEW YORK:

4TH Dept. App. Div. order of 12/22/17; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

State--Claim against State--Notice of Intention to File Claim--
Renewal of motion to treat the notice of intention as a claim;
Court of Claims denied claimant's motion for leave to renew that
part of his prior motion seeking to treat the notice of intention
as a claim; App. Div. affirmed.