

COURT OF APPEALS NEW FILINGS

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

May 18, 2018 through May 24, 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.

ADAMSON, PEOPLE ex rel. v GRIFFIN:

2ND Dept. App. Div. order of 3/13/18; denial of motion; sua sponte examination whether the App. Div. order finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Appeal--Appealable Paper--Order denying motion for leave to prosecute the appeal as a poor person and for the assignment of counsel;

App. Div. denied appellant's motion for leave to prosecute the appeal as a poor person and for the assignment of counsel, in an appeal from an order of Supreme Court, Dutchess County.

AYLWARD, et al. MATTER OF v ASSESSOR, CITY OF BUFFALO, et al.:

Supreme Court, Erie County judgment of 3/29/18; dismissal of proceeding; sua sponte examination (1) whether the March 29, 2018 judgment appealed from finally determines the proceeding(s) within the meaning of the Constitution; (2) whether appellants are aggrieved by the judgment appealed from; and (3) whether a substantial constitutional question is directly involved to support an appeal as of right;

Taxation--Real Property Tax--RPTL article 7 proceeding to reduce assessment values of real property—home inspections by tax assessor—whether the tax assessor failed to make the required showing that interior inspections were reasonable and necessary for preparation of a defense in a challenge to the assessment value, and whether the tax assessor failed to establish that its interest in interior inspections outweighed petitioners’ Fourth Amendment privacy rights; tax certiorari proceedings;

Supreme Court, Erie County, in proceedings pursuant to RPTL article 7 seeking reductions in the assessment values of various properties, granted respondents' motion to, among other things, inspect the interior of petitioners' homes; App. Div. modified by directing that the fourth and fifth ordering paragraphs shall apply only to exterior inspections, and as so modified, affirmed; Supreme Court thereafter denied the petition and dismissed the proceeding as to petitioner Higgins.

BROWN (BORIS), PEOPLE v:

1ST Dept. App. Div. order of 11/21/17; affirmance; leave to appeal granted by Wilson, J., 5/7/18;

Attorney and Client--Conflicts of Interest--Defendant’s attorney paid by another suspect in the crime who was represented by the attorney on an unrelated criminal matter-- whether defendant validly waived his counsel’s conflict of interest--whether such conflict was waivable in any event; whether trial court erred in denying defendant’s CPL 440.10 motion without setting forth findings of fact and conclusions of law (CPL 440.30 [7]); propriety of consecutive sentences for murder and gun possession charges;

Supreme Court, New York County, convicted defendant, after a jury trial, of murder in the second degree and two counts of criminal possession of a weapon in the second degree, and sentenced him, as a second felony offender, to an aggregate term of 32 years to life; Supreme Court thereafter denied defendant's CPL 440.10 motion to vacate the judgment; App. Div. affirmed.

GURVEY, MATTER OF v ACOSTA:

2ND Dept. App. Div. order of 4/11/18; denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any basis exists for an appeal as of right;

Proceeding Against Body or Officer--Mandamus--When remedy lies; claimed due process violations;

App. Div. denied petitioner's motion for an order directing respondent to vacate all orders entered by the App. Div., 1st Dept. since 2008 in proceedings involving petitioner, denied the petition and dismissed the proceeding on the merits.

LARCHMONT PANCAKE HOUSE, MATTER OF v BOARD OF ASSESSORS

&c., et al.:

2ND Dept. App. Div. order of 8/2/17; reversal; leave to appeal granted by Court of Appeals, 5/8/18;

Taxation--Assessment--Proceeding pursuant to Real Property Tax Law article 7 brought by petitioner, nonowner of subject property, to review real property tax assessments; whether petitioner is an aggrieved party within the meaning of the Real Property Tax Law; whether petitioner failed to satisfy condition precedent set forth in RPTL 524(3) because grievance was not filed by property owner, thereby depriving court of subject matter jurisdiction to review assessments;

Supreme Court, Westchester County, denied the motions of the Assessor of the Town of Mamaroneck and the Board of Assessment Review to dismiss the petitions in four related proceedings pursuant to Real Property Tax Law article 7 to review real property tax assessments for the tax years 2010-2013; App. Div. reversed and granted the motions to dismiss the petition in each proceeding.

LOPEZ-MENDOZA (JAIME), PEOPLE v:

1ST Dept. App. Div. order of 11/28/17; affirmance; leave to appeal granted by Rivera, J., 5/8/18;

Crimes--Right to Counsel--Effective Representation--Whether defendant's ineffective assistance of counsel claim is reviewable on direct appeal; whether counsel was ineffective for failing to adequately review surveillance evidence and advising the jury, during opening statements, that defendant would testify in a manner inconsistent with the evidence; evidence—whether error in admission of DNA evidence was harmless; whether carpet fiber evidence was properly admitted;

Supreme Court, New York County, convicted defendant of rape in the first degree and imposed sentence; App. Div. affirmed.

THOMAS (VICTOR), PEOPLE v:

1ST Dept. App. Div. order of 2/1/18; affirmance; leave to appeal granted by Fahey, J., 5/10/18;

Crimes--Appeal--Waiver of Right to Appeal—whether defendant’s waiver of the right to appeal was valid; crimes—confession—whether defendant’s statement to police, made after a detective showed defendant an incriminating photograph, was the product of custodial interrogation requiring Miranda warnings;

Supreme Court, Bronx County, convicted defendant of attempted assault in the first degree and sentenced defendant to a term of five years; App. Div. affirmed.

VISELLI et al. v THE RIVERBAY CORPORATION:

1ST Dept. App. Div. order of 11/9/17; affirmance; leave to appeal granted by Court of Appeals, 5/8/18; Rule 500.11 review pending;

Negligence--Maintenance of Premises--Firefighter slipped and fell on wet substance on painted concrete stairs, causing injuries; whether Supreme Court properly granted summary judgment dismissing plaintiffs’ claim alleging a violation of General Municipal Law § 205-a; whether defendant’s submission of a certificate of occupancy indicating that the building was in compliance with all applicable statutes, codes and ordinances shifted the burden to plaintiff to raise triable issues on that claim;

Supreme Court, Bronx County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.