

COURT OF APPEALS NEW FILINGS

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

June 8, 2018 through June 14, 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.

ADIRONDACK WILD: FRIENDS OF THE FOREST PRESERVE et al., MATTER OF
v NEW YORK STATE ADIRONDACK PARK AGENCY et al.:

3RD Dept. App. Div. order of 5/3/18; affirmance with dissents;

Environmental Conservation--Judicial Review--in CPLR article 78 proceeding challenging Department of Environmental Conservation's approval of Essex Chain Lakes Complex Unit Management Plan, whether certain causes of action were ripe for judicial review; whether a rational basis exists for the determination of the Department of Environmental Conservation that the Wild, Scenic and Recreational Rivers System Act permits establishment of snowmobile trail on a road that is located in a wild river area; whether Supreme Court properly dismissed the fourth cause of action on the basis that respondents are not bound by guidance document for the siting, construction and maintenance of snowmobile trails that was adopted by Department of Environmental Conservation in 2009;

Supreme Court, Albany County, dismissed petitioners' application, in a CPLR article 78 proceeding, to review a determination of respondent Department of Environmental Conservation approving a plan permitting the construction of a new snowmobile corridor; App. Div. affirmed.

BRASHER, MATTER OF v SAM DELL'S DODGE CORPORATION, et al.:

3RD Dept. App. Div. order of 3/22/18; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Workers' Compensation--Whether decision of Workers' Compensation Board denying claimant's application for reconsideration and/or full board review was arbitrary or capricious or constituted an abuse of discretion; alleged due process violations;

App. Div. affirmed a Workers' Compensation Board decision denying claimant's application for reconsideration and/or full board review.

DelaCRUZ (JEAN CARLOS), PEOPLE v:

1ST Dept. App. Div. order of 5/15/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Crimes--Sex Offenders--Sex Offender Registration Act--Whether a person who commits a sex crime between the ages of 16 and 17 should be spared a sex offender adjudication at a level higher than level one, especially without an individual clinical assessment—claimed due process and cruel and unusual punishment violations—whether defendant was properly classified as risk level one on the basis of a risk assessment instrument;

Supreme Court, New York County, adjudicated defendant a level three sex offender pursuant to the Sex Offender Registration Act; App. Div. affirmed.

JORDAN, et al., MATTER OF v NEW YORK CITY HOUSING AUTHORITY, et al.:

1ST Dept. App. Div. order of 10/31/17; affirmance; leave to appeal granted by Court of Appeals, 6/12/18;

Civil Service--Reinstatement--Whether Civil Service Law § 71 applies to labor class employees; parties—necessary parties—whether Department of Citywide Administrative Services is a necessary party to proceeding that challenged New York City Housing Authority's denial of petitioner's application for reinstatement; pleading—answer; whether respondent New York City Housing Authority should have been permitted an opportunity to answer the petition following the denial of its cross motion to dismiss;

Supreme Court, New York County, among other things, 1) granted the petition to the extent of remitting the proceeding to respondent New York City Housing Authority (NYCHA) for compliance with Civil Service Law § 71, 2) denied NYCHA's cross motion to dismiss the petition as against it, and 3) denied NYCHA's request to answer the petition; App. Div. affirmed.

LI, et al. v PENG &c., et al.:

2ND Dept. App. Div. order 5/9/18; 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;

Estoppel--Collateral Estoppel--Whether Supreme Court properly determined that judgment entered in New Jersey court conclusively disposed of plaintiffs' claims and that plaintiffs are therefore collaterally estopped from maintaining New York action; alleged constitutional violations;

Supreme Court, Queens County, denied plaintiffs' motion for summary judgment on the seventh cause of action (3/11/15 order); denied plaintiffs' motion for leave to serve a supplemental pleading (6/29/15 order); granted defendants' motion pursuant to CPLR 3211(a)(5) to dismiss the amended complaint as barred by the doctrine of collateral estoppel (7/6/15 order); and denied, as academic, defendants' motion to quash two judicial subpoenas duces tecum and ad testificandum issued to nonparties; App. Div. affirmed the 7/6/15 order, and dismissed the appeals from the other orders.

VANYO v BUFFALO POLICE BENEVOLENT ASSOCIATION, INC. et al.:

4TH Dept. App. Div. order of 3/16/18; affirmance;

Limitation of Actions--Claim in Amended Pleading--Action by former police officer alleging improper termination following arbitration conducted pursuant to collective bargaining agreement; whether Supreme Court properly dismissed the first and second causes of action alleged in the amended complaint as time-barred; whether relation-back doctrine of CPL 203(f) applies to the first and second causes of action; dismissal of complaint--whether Supreme Court exceeded its authority in sua sponte dismissing original complaint with prejudice pursuant to CPLR 306-b; whether defendants waived any objection based upon lack of service of the original complaint;

Supreme Court, Erie County, granted the motions of defendants to dismiss the complaint and amended complaint against them; App. Div. affirmed.

WEGMANS FOOD MARKETS, INC., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK:

3RD Dept. App. Div. order of 11/22/17; annulled determination; leave to appeal granted by Court of Appeals, 6/7/18;

Taxation--Sales and Use Taxes--Whether an ambiguous tax exclusion should be construed in favor of the taxpayer or the government—whether the Appellate Division correctly concluded that the information services provided to appellant by a nonparty were excluded from sales tax liability under Tax Law § 105 (c)(1)—whether the Appellate Division properly made factual determinations not addressed by the Tax Appeals Tribunal;

App. Div. annulled the determination of respondent Tax Appeals Tribunal denying petitioner's request for certain refunds of sales and use tax imposed under Tax Law articles 28 and 29.