

COURT OF APPEALS NEW FILINGS

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

**February 22 through February 28, 2019**

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.**

ALTAMIRANO (MAURICIO), PEOPLE v:

App. Term, 2<sup>nd</sup>, 11<sup>th</sup>, and 13<sup>th</sup> Judicial Districts order of 5/11/18; affirmance; leave to appeal granted by Feinman, J., 2/11/19;

**Crimes--Instructions--Whether defendant was denied the right to a fair trial when the trial court provided the jury with a charge on the defense of temporary and innocent possession of a weapon without first informing counsel and without permitting counsel to reopen his summation; whether harmless error analysis applies;**

Criminal Court of the City of New York, Kings County, convicted defendant of criminal possession of a weapon in the fourth degree and imposed sentence; App. Term affirmed.

BATTICKS (JONATHAN), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/30/18; affirmance; leave to appeal granted by Fahey, J., 2/1/19;

**Crimes--Jurors--Challenge to trial court's handling of situation involving juror who made an outburst during cross-examination of a witness by co-defendant's counsel--whether trial court erred in failing to conduct an inquiry of the juror pursuant to People v Buford (69 NY2d 290);**

Supreme Court, New York County, convicted defendant, after a jury trial, of assault in the second degree, and sentenced him, as a second violent felony offender, to a prison term of 6 1/2 years; App. Div. affirmed.

CNH DIVERSIFIED OPPORTUNITIES MASTER ACCOUNT, L.P. v CLEVELAND UNLIMITED, INC.:

1<sup>ST</sup> Dept. App. Div. order of 6/26/18; affirmance; leave to appeal granted by Court of Appeals, 2/14/19;

**Secured Transactions--Security Agreements--Whether Supreme Court properly dismissed plaintiffs' breach of contract claim based on parties' indenture, which tracked the language of section 316(b) of the Trust Indenture Act of 1939 (15 USC § 77ppp[b]) and provided that bondholder's right to receive payment or to bring enforcement suit shall not be impaired without holder's consent; whether collateral trustee was authorized to pursue default remedy of strict foreclosure;**

Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the complaint and denied plaintiffs' motion for summary judgment; App. Div. affirmed.

MYERS, MATTER OF v FIALA, &c.:

3<sup>RD</sup> Dept. App. Div. order of 2/1/19; denial of motion; sua sponte examination of 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;

**Proceeding Against Body or Officer--Mandamus--CPLR article 78 proceeding against Commissioner of New York State Department of Motor Vehicles to, among other things, compel restoration of petitioner's drivers license;**

Supreme Court, Albany County, dismissed the petition and denied the requested relief in all respects; App. Div. denied appellant's motion for permission to appeal and provide judicial oversight, and granted his motion for permission to proceed as a poor person only to the extent that the motion filing fee was waived.

JORDAN R., MATTER OF (ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES; YON R.-W.) (AND ANOTHER PROCEEDING):

2<sup>ND</sup> Dept. App. Div. order of 6/6/18; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the appeal was timely taken;

**Parent and Child--Abused or Neglected Child--Claimed fraud and impartiality in court proceedings;**

Family Court, Orange County, after a fact-finding hearing, found that the mother neglected the subject children; and thereafter, upon the order of the fact-finding and after a dispositional hearing, directed the mother to comply with a certain order of protection; App. Div. dismissed appeal from the order of fact-finding as that order was superseded by the order of disposition, and affirmed the order of disposition.