

COURT OF APPEALS NEW FILINGS

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

**May 17 through May 23, 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.**

CAJIGAS, MATTER OF v STANFORD &c.:

3<sup>RD</sup> Dept. App. Div. order of 2/21/19; modification; leave to appeal granted by App. Div., 5/3/19; Rule 500.11 review pending;

**Crimes--Sex Offenders--Whether petitioner is subject to Executive Law § 259-c(14) , which prohibits certain inmates being released from custody from knowingly entering into or upon any school-grounds; petitioner, a level three sex offender, was serving a sentence for an offense not enumerated in section 259-c prior to his release from custody;**

Supreme Court, Albany County, dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to review a determination of the Board of Parole interpreting Executive Law § 259-c(14); App. Div. modified and granted the petition to the extent of declaring that petitioner is not subject to the school grounds restriction set forth in Executive Law § 259-c(14).

EPIPHANY COMMUNITY NURSERY SCHOOL v LEVEY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 2/5/19; modification; leave to appeal granted by App. Div., 5/7/19; Rule 500.11 review pending;

**Limitations of Actions--Fraud--Whether plaintiff's fraud claim, based on defendant's unauthorized transfers from plaintiff's bank account between 2007 and 2013, is time-barred; Pleading--Sufficiency of Pleading--whether complaint sufficiently states a cause of action sounding in fraud;**

Supreme Court, New York County, granted defendant's motions to dismiss the complaint as against them pursuant to CPLR 321(a)(5); App. Div. modified to deny Hugh W.

Levey's motion to dismiss as to the claims for fraud and breach of fiduciary duty, and to deny the collateral defendants' motion to dismiss as to the claims for aiding and abetting fraud for the bank transfers, and otherwise affirmed.

MANCUSO, &c. v KALEIDA HEALTH, &c.:

4<sup>TH</sup> Dept. App. Div. order of 5/3/19; affirmance; Rule 500.11 review pending;

**Contribution--Apportionment of Liability among Joint Tortfeasors--Whether Supreme Court properly precluded defendant from asserting CPLR article 16 defense at trial; defendant hospital, which treated decedent before her death, sought to introduce evidence of fault of third-party defendants, rehabilitation centers where decedent was treated after her release from the hospital;**

Supreme Court, Erie County, awarded plaintiff money damages upon a jury verdict; App. Div. affirmed.

NEGRON, PEOPLE ex rel. v SUPERINTENDENT, WOODBOURNE  
CORRECTIONAL FACILITY:

3<sup>RD</sup> Dept. App. Div. order of 2/21/19; reversal; leave to appeal granted by App. Div., 5/3/19;

**Crimes--Sex Offenders--Whether petitioner is subject to Executive Law § 259-c (14), which prohibits certain inmates being released from custody from knowingly entering into or upon any school grounds; petitioner, a level three sex offender, was serving a sentence for an offense not enumerated in section 259-c prior to his release from custody;**

Supreme Court, Sullivan County, denied petitioner's CPLR article 70 application for a writ of habeas corpus; App. Div. reversed, converted the CPLR article 70 proceeding to a CPLR article 78 proceeding, and granted the petition to the extent of annulling that part of the determination of the Board of Parole as found that petitioner is subject to the school-grounds restriction set forth in Executive Law § 259-c(14).

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK v  
D'AGOSTINO SUPERMARKETS, INC.:

1<sup>ST</sup> Dept. App. Div. order of 1/29/19; affirmance; leave to appeal granted by Court of Appeals, 5/7/19;

**Damages--Liquidated Damages--Whether liquidated damages provision of a commercial lease surrender agreement was enforceable;**

Supreme Court, New York County, denied plaintiff's motion for summary judgment on the complaint, and granted defendant's cross motion for summary judgment striking plaintiff's claim for liquidated damages and for entry of judgment against defendant in the amount of \$175,751.73, with interest accrued from October 14, 2016 to the date of judgment; App. Div. affirmed.