

COURT OF APPEALS NEW FILINGS

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

**December 20, through December 26, 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.**

AYBAR, et al. v AYBAR, et al.; FORD MOTOR COMPANY et al.:  
2<sup>ND</sup> Dept. App. Div. order of 1/23/19; reversal; leave to appeal granted by Court of Appeals, 12/17/19;

**Courts--Jurisdiction--Whether the Appellate Division improperly ignored this Court's ruling in Bagdon v Philadelphia & Reading Coal & Iron Co. (217 NY 432 [1916]) and the United State Supreme Court's ruling in Neirbo Co. v Bethlehem Shipbuilding Corp. (308 US 165 [1939]), by holding that a foreign corporation's voluntary registration to do business in New York and its designation of New York's Secretary of State as its agent for the service of process was insufficient as a consent to general jurisdiction in New York;**

App. Div. reversed and granted the separate motions of the defendants Ford Motor Company and Goodyear Tire & Rubber Co. pursuant to CPLR 3211 (a)(8) to dismiss the complaint insofar as asserted against them.

PEOPLE ex rel. GRAFTON v FLUDD &c. (AD NO. 19/11444):

2<sup>ND</sup> Dept. App. Div. order of 11/13/19; denial of writ of habeas corpus; sua sponte examination of whether any basis exists to support an appeal as of right;

**Habeas Corpus--Petition--Whether the Appellate Division properly denied petitioner's application for a writ of habeas corpus;**

App. Div. among other things, denied petitioner's application for a writ of habeas corpus.

HOME EQUITY MORTGAGE TRUST SERIES 2006-1, et al. v DLJ MORTGAGE CAPITAL, INC.:

1<sup>ST</sup> Dept. App. Div. order of 9/17/19; affirmance; leave to appeal granted by App. Div., 12/12/19;

**Contracts--Breach or Performance of Contract--Whether the doctrine of relation back permits residential mortgage-backed securities (RMBS) plaintiffs to assert otherwise untimely notice-based claims for any loan in an RMBS trust, and thereby excuse plaintiffs' failure to comply with a contractual precondition to invoking the repurchase remedy, as long as the plaintiffs provided timely pre-suit repurchase demands relating to some specified loans in the trust--Evidence--Demonstrative Evidence--Whether plaintiffs may rely on statistical sampling to prove liability and damages for loans outside of the sample when a RMBS sole remedy provision requires loan-specific proof of breach, materiality, and damages--Contracts--Breach or Performance of Contract--Whether plaintiffs are entitled to recover as damages interest that did not, in fact, accrue when an RMBS contractual provision provides for the payment of "accrued" interest as part of the repurchase remedy;**

Supreme Court, New York County, denied the motion of defendant DLJ Mortgage Capital, Inc. for partial summary judgment, and granted plaintiffs' motion for partial summary judgment; App. Div. affirmed.

OWENS, MATTER OF v NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, DEPARTMENT OF SOCIAL SERVICES, OFFICE OF CHILD SUPPORT ENFORCEMENT, SUPPORT COLLECTION UNIT:

1<sup>ST</sup> Dept. App. Div. order of 11/21/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**Parent, Child and Family--Support--Whether Supreme Court properly dismissed as moot petition to reverse respondent's determination that petitioner's tax refund would be offset to pay child support; whether petitioner could seek reimbursement of overpayment of child support; Appearances--Appearance by Corporation Counsel--Whether respondent agency appeared by a proper attorney; alleged constitutional violations;**

Supreme Court, New York County, denied the petition to annul respondent's determination, dated 10/19/17, which denied petitioner's appeal of respondent's decision to offset his tax refund to pay child support arrears, and dismissed the proceeding brought pursuant to CPLR article 78; App. Div. affirmed.

P.B. #7, LLC v RICHMOND (APP. DIV. NO. 2013-2106; 2013-2107; 2013-2108):

2<sup>ND</sup> Dept. App. Div. order of 12/26/18, dismissal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

**Mortgages--Foreclosure--Default; Contempt--Civil Contempt;**

Supreme Court, Kings County, denied a motion by defendant Richmond to dismiss the complaint pursuant to CPLR 3215 (c) (1/14/13 order); among other things, denied that branch of the cross motion of defendant Richmond to dismiss the complaint pursuant to CPLR 3215 (c) (12/19/12 order); and granted the temporary receiver's motion to hold defendant Richmond in civil contempt and directed him to comply with an order of the same court dated 4/24/12 (10/24/12 order); App. Div. (1) dismissed the appeal from the 1/14/13 order; (2) affirmed the 10/24/12 order, and (3) affirmed the 12/19/12 order insofar as appealed from.

P.B. #7, LLC v RICHMOND (APP. DIV. NO. 2015-06192):

2<sup>ND</sup> Dept. App. Div. order of 12/26/18; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

**Mortgages--Foreclosure--Default--Vacatur;**

Supreme Court, Kings County, denied those branches of defendant Richmond's motion which were pursuant to CPLR 5015 (a)(3), in effect, to vacate a judgment of foreclosure and sale of the same court dated 9/28/12, entered upon his default, and to set aside the foreclosure sale of the subject property; App. Div. affirmed.