

COURT OF APPEALS NEW FILINGS

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

February 28, 2020 through March 6, 2020

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.

ABASCAL-MONTALVO v CITY OF NEW YORK:

1ST Dept. App. Div. order of 1/30/20; affirmance; sua sponte examination of whether any basis exists for an appeal as of right;

Dismissal and Nonsuit--Dismissal of Complaint--Whether complaint fails to state a cause of action;

Supreme Court, New York County, granted defendant's cross motion to dismiss the complaint; App. Div. affirmed.

DANIELS (TODD), PEOPLE v:

2ND Dept. App. Div. order of 9/25/19; affirmance; leave to appeal granted by Wilson, J., 2/20/20; Rule 500.11 review pending;

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant validly waived the right to appeal;

Supreme Court, Kings County, imposed sentence on 11/8/17; App. Div. affirmed.

DITECH FINANCIAL, LLC, &c. v NAIDU, et al.:

2nd Dept. App. Div. order of 9/18/19; reversal; leave to appeal granted by Court of Appeals, 2/18/20;

Mortgages--Acceleration Clause--Whether plaintiff's execution of a stipulation to discontinue prior foreclosure action constituted an affirmative act to revoke plaintiff's election to accelerate the mortgage, thereby rendering subsequent foreclosure action timely;

Supreme Court, Queens County, denied the motion of defendant Naidu to dismiss the complaint insofar as asserted against him as time-barred and granted those branches of plaintiff's cross motion for summary judgment on the complaint insofar as asserted against defendant Naidu and for an order of reference; App. Div. reversed the orders, granted the motion of defendant Naidu to dismiss the complaint insofar as asserted against him as time-barred, and denied as academic those branches of plaintiff's cross motion for summary judgment on the complaint as asserted against defendant Naidu and for an order of reference.

DUVAL (DRURY), PEOPLE v:

1ST Dept. App. Div. order of 11/26/19; affirmance with dissents; leave to appeal granted by Gesmer, J., 1/15/20;

Crimes--Search Warrant--Whether the search warrant on its face gave adequate constitutional notice of which particular unit in the house would be searched; whether the motion court was authorized to rely on materials not incorporated into the warrant to uphold its validity;

Supreme Court, Bronx County, among other things, denied defendant's motion to suppress evidence seized pursuant to search warrant (4/16/13 order); denied motion to reargue motion to suppress evidence seized pursuant to search warrant (10/7/13 order); and thereafter, convicted defendant of criminal possession of a weapon in the third degree (12/4/15 judgment [amended 1/5/16]); App. Div. affirmed.

FROEHLICH, MATTER OF v NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION:

3RD Dept. App. Div. order of 1/30/20; affirmance with dissents; Rule 500.11 review pending;

Civil Service--Judicial Review--Whether respondent rationally determined that petitioner was not assulted within the meaning of Civil Service Law § 71 and therefore was not entitled to a two-year leave of absence from his employment as a correctional sergeant;

Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent denying petitioner a two-year leave of absence pursuant to Civil Service Law § 71; App. Div. affirmed.

JEAN-PAUL v 67-30 DARTMOUTH ST. OWNERS CORP.:

2ND Dept. App. Div. order of 7/31/19; affirmance; leave to appeal granted by Court of Appeals, 2/18/20;

Parties--Capacity to Sue--Whether a Chapter 7 bankruptcy proceeding dismissal restores a debtor-plaintiff's capacity or standing to pursue a personal injury action that the debtor-plaintiff failed to list as an asset during the bankruptcy proceeding;

Supreme Court, Queens County, among other things, granted that branch of defendant's motion which was for summary judgment dismissing the complaint; App. Div. affirmed.

REDDY v ABITBOL:

4TH Dept. App. Div. order of 1/14/20; denied motion to transfer; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Denial of motion to transfer appeal;

Supreme Court, Onondaga County, inter alia, denied plaintiff's motion to vacate an order of that court dated 12/7/18; App. Div. denied plaintiff's motion to transfer the appeal.

REDDY v WSYR NEWSCHANNEL 9, et al.:

4th Dept. App. Div. order of 1/13/20; denied motion to transfer; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Denial of motion to transfer appeal;

Supreme Court, Onondaga County, inter alia, denied plaintiff's motion to vacate an order of that court dated 11/27/17; App. Div. denied plaintiff's motion to transfer the appeal.

TORRES (CARLOS), PEOPLE v:

App. Term 1ST Dept. order of 9/23/19; affirmance; leave to appeal granted by Feinman, J., 2/10/20;

Constitutional Law--Validity of Statute--Whether Administrative Code of the City of New York § 19-190 is unconstitutional because it criminalizes an act committed without "due care," a civil negligence standard rather than a criminal negligence standard; whether Administrative Code § 19-190 is preempted by state law;

Criminal Court of the City of New York, New York County, convicted defendant of failure to exercise due care to avoid collision with a pedestrian and failure to yield to a pedestrian; App. Div. affirmed.

VARGAS v DEUTSCHE BANK NATIONAL TRUST COMPANY:

1ST Dept. App. Div. order of 1/31/19; affirmance; leave to appeal granted by Court of Appeals, 2/18/20;

Mortgages--Acceleration Clause--Whether letter from defendant's predecessor-in-interest, which informed plaintiff that the mortgage debt would be accelerated if he failed to cure his default, accelerated the loan balance and commenced the statute of limitations for foreclosure action; whether discontinuance of prior foreclosure action constituted an affirmative act by defendant to revoke acceleration;

Supreme Court, New York County, upon renewal, denied defendant's motion to dismiss the complaint and granted plaintiff's cross motion for summary judgment declaring plaintiff's property free and clear of all liens and encumbrances by defendant; App. Div. affirmed.