

COURT OF APPEALS NEW FILINGS

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

September 11, 2020 through September 17, 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.

CALLEN, &c., MATTER OF v NEW YORK CITY LOFT BOARD, et al.:

1ST Dept. App. Div. order of 1/16/20; modification; leave to appeal granted by Court of Appeals, 9/1/20;

Landlord and Tenant--Loft Law--Whether respondent Loft Board has the authority to deny a tenant's request to withdraw an application for the legal conversion of a loft from commercial use to residential use pursuant to the Loft Law (see Multiple Dwelling Law 7-C);

Supreme Court, New York County, granted the petitions to annul respondent New York City Loft Board's determination, dated March 16, 2017, which rejected applications for reconsideration of a prior determination rejecting a proposed settlement agreement

between petitioner building owner and residential tenants and remanded the matter for administrative resolution of the tenants' application for Loft Law coverage; App. Div. modified, denied the CPLR article 78 petitions in part; and, as so modified, affirmed the judgments and remitted the matters to respondent Board for further proceedings consistent therewith.

HOFFAY, et al., MATTER OF v TOWN OF SAND LAKE, et al.:

3RD Dept. App. Div. order of 7/23/20; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Municipal Corporations--Zoning--Whether local law, which includes revised zoning districts, creates unconstitutional zoning barriers and unlawfully discriminates against religious land uses;

Supreme Court, Rensselaer County, dismissed petitioner's applications, in three combined CPLR article 78 proceedings and declaratory judgment actions, to review a determination of respondent Town Board of the Town of Sand Lake enacting Local Law No. 4 (2017) of the Town of Sand Lake; App. Div. modified, by (1) reversing so much of the judgment as found that certain petitioners lacked standing; and (2) annulling § 250-99(C) and (G) of Local Law No. 4 (2017) of the Town of Sand Lake; and as so modified, affirmed.

MENTAL HYGIENE LEGAL SERVICE, &c., MATTER OF v DELANEY, &c, et al.:

3RD Dept. App. Div. order of 8/8/19; affirmance; leave to appeal granted by Court of Appeals, 9/1/20;

Proceeding Against Body or Officer--Mandamus--When Remedy Available--Whether mandamus was available to challenge placement of developmentally disabled child in hospital emergency room while child waited for a residential placement; Social Services--Medical Assistance--Whether Medicaid Act's requirement that medical assistance "shall be furnished with reasonable promptness to all eligible individuals" (42 USC § 1396a [a] [8]) gives rise to a private right of action; Civil rights--Discrimination Based on Disability--Whether respondent's failure to provide child with certain services violated the Americans with Disabilities Act;

Supreme Court, Clinton County, dismissed petitioner's application, in a combined proceeding pursuant to CPLR articles 70 and 78 and action for declaratory judgment, to, among other things, challenge the placement of the subject child at respondent hospital and the services provided by the Office for People with Developmental Disabilities and the Department of Health; App. Div. affirmed.

STEFANIAK v ZULKHARNAIN:

4TH Dept. App. Div. order of 2/7/20; modification; sua sponte examination whether (1) the two-Justice dissent in the 7/11/14 order is on a question of law, and (2) a substantial constitutional question is directly involved to support an appeal as of right from the 2/7/20 order;

Attorney and Client--Compensation--Award of nunc pro tunc attorney's fees;

Supreme Court, Erie County, inter alia, awarded Roberta L. Reedy, as administrator of the estate of Kevin M. Reedy, a money judgment against defendant in the amount of \$70,890; App. Div. modified by striking from the first decretal paragraph the figure of 708.0 and replacing it with the figure 475.0, and by striking from the first and second decretal paragraphs the amount of \$70,890 and replacing it with the amount of \$47,500, and as so modified, affirmed the order and judgment.

WELLS FARGO BANK, N.A., etc. v FERRATO:

1ST Dept. App. Div. order of 5/28/20; affirmance and reversal; leave to appeal granted by App. Div., 8/27/20;

Mortgages--Foreclosure--Whether plaintiff failed to affirmatively revoke acceleration of mortgage debt, where plaintiff voluntarily discontinued foreclosure action;

Supreme Court, New York County, denied plaintiff's motion to revoke acceleration of a mortgage loan made to defendant; thereafter, denied defendant's motion to dismiss plaintiff's foreclosure action on the basis of CPLR 3211(a)(4) and CPLR 3211(a)(5); App. Div. affirmed the 3/6/18 order and reversed the 8/7/18 order and granted the motion to dismiss.

WILLIAMS (DON), PEOPLE v:

4TH Dept. App. Div. order of 6/12/20; affirmance; leave to appeal granted by Fahey, J., 9/1/20;

Crimes--Instructions--Whether the trial court erred when, in response to a jury note, it projected a portion of the court's final instructions on a screen in view of the jury and simultaneously reread that portion of the charge to the jury; Crimes--Fair Trial--Whether defendant was deprived of a fair trial by a remark made by the court and comments of the prosecutor on summation and during cross-examination; Crimes--Jurors--Whether the trial court erred in denying defendant's for cause challenge of a prospective juror;

Supreme Court, Monroe County, convicted defendant of criminal possession of a controlled substance in the third degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

