



State of New York
Court of Appeals
Clerk's Office
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COURT OF APPEALS NEW FILINGS

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

August 9, 2024 through August 15, 2024

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.

AMERISOURCEBERGEN DRUG v NYSDOH:

APL-2024-00085

3rd Dept. App. Div. order of 5/23/24; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution; whether the two-justice dissent at the Appellate Division is in favor of the parties taking each appeal; and whether a substantial constitutional question is involved to support an appeal as of right.

Constitutional Law—Validity of Statute—Whether the unconstitutional cost-pass-through prohibition in the Opioid Stewardship Act is severable from the Act's surcharges; whether the Act's surcharges for 2018 transactions are invalid under the Due Process Clauses of the U.S. and New York Constitutions; whether application of the Act to 2017, the year before the statute was passed, was constitutional and not unduly retroactive;

Supreme Court, Albany County, among other things, granted defendants' cross-motion for summary judgment dismissing the complaint; App. Div., with two Justices dissenting, modified by reversing so much of the order as found the Opioid Stewardship Act to be constitutional in its entirety, declared invalid that aspect of the Act pertaining to 2017, and remitted the matter to Supreme Court for further proceedings consistent with the Appellate Division's decision.

GLEN OAKS VILLAGE OWNERS v CNY:

APL-2024-00106

1st Dept. App. Div. order of 5/16/24; modification; leave granted by the Appellate Division with certified question 8/1/24;

Local Laws—Preemption by State—Whether plaintiffs stated a cause of action alleging that Local Law 97, which targets building emission limits to combat climate change and improve air quality and public health by imposing penalties for violating the emission limits, is preempted by New York State's Climate Leadership and Community Protection Act;

Supreme Court, New York County, granted defendants' motion to dismiss the first through fourth causes of action pursuant to CPLR 3211(a)(7); App. Div. modified to deny the motion as to the first cause of action, and otherwise affirmed.

OSUAGWU v OSUAGWU:

APL-2024-00107

2nd Dept. App. Div. order of 7/31/24; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Husband and Wife and Other Domestic Relationships—Whether defendant's 14th amendment rights were violated when the trial court ordered the sale of property at the preliminary conference in a divorce proceeding while denying the request for discovery; whether defendant's 14th amendment rights were violated when the trial court gave plaintiff the authority to sign for defendant on certain legal documents over his objection; whether the trial court had the authority to determine how federal taxes should be allocated in a divorce proceeding;**

Supreme Court, Rockland County; following a nonjury trial, among other things, determined that certain premises are marital property subject to equitable distribution, with the parties to share equally in the net proceeds of the sale of those premises, directed that the defendant was solely responsible for payment of unpaid federal and state income taxes, penalties, fines, or interest due, awarded the plaintiff sole legal and physical custody of the parties' children, and awarded the plaintiff counsel fees in the amount of \$15,000; App. Div. affirmed insofar as appealed from.

SANMIGUEL v GRIMALDI:

APL-2024-00109

1st Dept. App. Div. order of 5/23/24; modification; leave granted by the Appellate Division with certified question 8/1/24;

Physicians and Surgeons—Lack of Informed Consent—Whether a plaintiff may recover for emotional harm where plaintiff asserts claim for lack of informed consent for procedure performed on child while in utero; child was born alive and plaintiff sustained no independent physical injury; Employment

Relationships—Respondeat Superior—Vicarious Liability—whether defendant hospital can be held vicariously liable for negligence of nurse against whom plaintiff voluntarily discontinued action based on nurse's death;

Supreme Court, Bronx County, denied defendant St. Barnabas Hospital's motion for summary judgment dismissing the complaint as against it, and denied defendant Dr. Meryl Y. Grimaldi's motion for partial summary judgment on plaintiff mother's fourth cause of action for failure to obtain informed consent; App. Div. modified, to grant St. Barnabas Hospital's motion for summary judgment to the extent of dismissing so much of plaintiff's amended complaint as sought recovery for negligent neonatal care, and otherwise affirmed.

MATTER OF TRUMP v MERCHAN:

APL-2024-00110

1st Dept. App. Div. judgment of 8/1/24; denial of petition; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Prohibition—Whether petitioner was entitled to extraordinary remedy of writ of prohibition; petitioner contends that continued enforcement of restraining order issued in pending criminal case violates the First Amendment;

App. Div. (1) denied the petition pursuant to CPLR article 7803 challenging order of Supreme Court, New York County, entered June 25, 2024, which, among other things, denied in part petitioner's posttrial motion to terminate the orders entered March 26, 2024 (the Original Restraining Order), and April 1, 2024 (the Amended Restraining Order), insofar as paragraph (b) of the Restraining Order limited his ability to make certain public statements about court staff, the District Attorney's staff, and family members of the court, the District Attorney, and their staff, and extended this limitation through sentencing; and (2) dismissed the proceeding.

PEOPLE v WILLIAMS (LOCKSLEY):

APL-2024-00103

App. Term, 2nd, 11th and 13th Jud. Dists., order 2/9/24; affirmance; leave to appeal granted by Wilson, Ch. J., 8/1/24;

Crimes—Right to Speedy Trial—Whether an inaccurate CPL 30.30(5-a) certification renders the People's statement of readiness invalid;

NYC Criminal Court, Kings County, convicted defendant, upon his plea of guilty, of

unlicensed operation of a motor vehicle, and imposed sentence; App. Term affirmed.