

COURT OF APPEALS NEW FILINGS

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

**November 3, 2017 through November 9, 2017**

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.**

DIXON v STATE OF NEW YORK:

3<sup>RD</sup> Dept. App. Div. order of 9/28/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Courts--Court of Claims--Whether claimant stated a cause of action and whether claim was timely--personal injury claim by prisoner related to claimant's belief that the name on his birth certificate has been misused by defendant's employees and agents--claimed false criminal accusations and convictions; claimed due process violations; Court of Claims granted defendant's motion to dismiss the claim; App. Div. affirmed.

EASTBROOKE CONDOMINIUM, &c., MATTER OF v AINSWORTH, &c. et al.:  
4<sup>TH</sup> Dept. App. Div. order of 2/10/17; affirmance; leave to appeal granted by Court of Appeals, 10/24/17;

Taxation--Assessment--Whether condominium unit owner's authorization to condominium's board of managers to act as an agent in proceeding challenging tax assessment for a particular tax year authorizes the board to act as unit owner's agent for a different year; application of Real Property Tax Law § 339-y (4); whether respondents waived any deficiency in unit owners' authorizations;

Supreme Court, Monroe County, granted the petitions under Real Property Tax Law article 7 to the extent of reducing the tax assessments for the challenged years, but limited the condominium unit owners entitled to tax refunds; App. Div. affirmed.

GALAXY BAR & GRILL CORP., MATTER OF v NEW YORK STATE LIQUOR AUTHORITY:

1<sup>ST</sup> Dept. App. Div. order of 10/12/17; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution; Intoxicating Liquors--Licenses--Whether the determination by the State Liquor Authority, disapproving petitioner's application for a full on-premises liquor license, had a rational basis; Supreme Court, New York County, granted the amended petition brought pursuant to CPLR article 78 and annulled respondent New York State Liquor Authority's (SLA) determination, dated 2/16/16, which denied petitioner Galaxy Bar & Grill Corp.'s application for a full on-premises liquor license, and remitted the matter to the SLA for reconsideration of the application; App. Div. affirmed.

GOLSTON, PEOPLE ex rel. v KIRKPATRICK, &c.:

3<sup>RD</sup> Dept. App. Div. order of 9/21/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any jurisdictional basis exists to support an appeal as of right; Habeas Corpus--When remedy available; Supreme Court, Clinton County, granted respondent's motion to dismiss the petition for a writ of habeas corpus in a proceeding pursuant to CPLR article 70; App. Div. affirmed.

NIAGARA MOHAWK POWER CORPORATION, &c. v ALLIED HEALTHCARE PRODUCTS, INC.:

3<sup>RD</sup> Dept. App. Div. order of 3/31/16; reversal; leave to appeal granted by Court of Appeals, 10/17/17; Covenants--Covenants Running with the Land--Whether affirmative covenant to provide free power to manufacturing facilities on property now owned by defendant Allied Healthcare Products is unenforceable as a burden in perpetuity; whether plaintiff and defendant Albany Engineering are equitably estopped from challenging covenant; whether defendant Allied Healthcare Products abandoned the power covenant;

Supreme Court, Albany County, among other things, granted the motion of defendant Allied Healthcare Products for summary judgment dismissing, among other things, the second amended complaint against it; App. Div. reversed, denied the motion of defendant Allied Healthcare Products for summary judgment, granted the motions of plaintiff and defendant Albany Engineering Corporation for summary judgment, and declared that the power covenant at issue is unenforceable; Supreme Court thereafter denied plaintiff's motion to allow further proceedings to adjudicate the scope of its recoverable damages.