

COURT OF APPEALS NEW FILINGS

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

**September 14, 2018 through September 20, 2018**

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.**

FRANKLIN STREET REALTY CORP., MATTER OF v NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, et al. (AND FOUR OTHER PROCEEDINGS):

1<sup>ST</sup> Dept. App. Div. order of 7/19/18; confirmed determinations of 5/28/15 and 10/29/15; **Municipal Corporations--Regulation of Billboards--Challenge to determinations of the New York City Environmental Control Board (ECB) which found that petitioners engaged in unauthorized outdoor advertising--buildings displaying signs promoting the law offices of the attorney shareholder of the corporate building owners--whether the ECB's determinations are arbitrary and capricious or contrary to the plain language of the applicable sections of the City Administrative Code;**

App. Div. confirmed 5/28/15 and 10/29/15 determinations of respondent New York City Environmental Control Board, denied the petitions and dismissed the proceedings transferred from Supreme Court, New York County.

HENRY v HAMILTON EQUITIES, INC., et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/1/18; affirmance; leave to appeal granted by Court of Appeals, 9/6/18;

**Negligence--Maintenance of Premises--Liability of out-of-possession landlords for condition of nursing home premises where plaintiff nurse was injured in a slip and fall incident--whether exception to out-of-possession landlord rule set forth in Putnam v Stout (38 NY2d 607 [1976]) applies where the owner has a duty to repair under its contract with and regulations promulgated by HUD;**

Supreme Court, Bronx County, among other things, granted the motion of defendants Hamilton Equities, Inc., Hamilton Equities Company, and Suzan Chait-Grandt, as administrator of the estate of Joel Chait, for summary judgment dismissing the complaint and all cross claims as against them; App. Div affirmed.

PEOPLE ex rel. ORTIZ v BRESLIN &c., et al.:

Supreme Court, Queens County judgment of 9/5/18; denial of application; sua sponte examination of whether an appeal as of right lies pursuant to CPLR 5601(b)(2);

**Habeas Corpus--When Remedy Available--Whether Correction Law § 73(10), which allows for petitioner's continued detention at a correctional facility beyond petitioner's maximum expiration date based on petitioner's inability to find housing compliant with Executive Law § 259-c(14), is unconstitutional; whether habeas corpus relief is available to challenge petitioner's continued detention;**

Supreme Court denied the application for a writ of habeas corpus.

RIVERA v STATE OF NEW YORK:

4<sup>TH</sup> Dept. App. Div. orders of 6/8/18; affirmance; leave to appeal granted by Court of Appeals, 9/6/18;

**Employment Relations--Respondent Superior--Vicarious Liability--Whether the Court of Claims properly concluded that the State was not vicariously liable for the actions of a corrections officer; whether corrections officer, who assaulted inmate, was acting outside the scope of officer's employment; Pleading--Answer--whether the Court of Claims abused its discretion in allowing State to amend its answer to include affirmative defense;**

Court of Claims (2/19/16 order), among other things, granted the motion of defendant for leave to amend its answer; and thereafter, (9/14/17 order) denied the motion of claimant for summary judgment, granted the cross motion of defendant for summary judgment, and dismissed the claim.