

COURT OF APPEALS NEW FILINGS

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

September 27, through October 3, 2019

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.

CUTAIA v THE BOARD OF MANAGERS OF 160/170 VARICK STREET
CONDOMINIUM, et al.:

1ST Dept. App. Div. order of 5/2/19; reversal; leave to appeal granted by App. Div., 8/6/19; Rule 500.11 review pending;

Labor--Safe Place to Work--Whether plaintiff established entitlement to summary judgment on the Labor Law § 240(1) claim; plaintiff was injured when he received electrical shock and fell off ladder; application of Nazario v 222 Broadway, LLC (28 NY3d 1054 [2016]);

Supreme Court, New York County, inter alia, denied plaintiff partial summary judgment on his Labor Law § 240(1) claim as against defendants The Rector, Church Wardens and Vestrymen of Trinity Church in the City of New York, Michilli Construction, Inc., and Michilli, Inc.; App. Div. reversed and granted the motion.

DANIELS v NEW YORK CITY TRANSIT AUTHORITY:

1ST Dept. App. Div. order of 4/23/19; affirmance; leave to appeal granted by Court of Appeals, 9/10/19; Rule 500.11 review pending;

Trial--Evidence--Whether the trial court abused its discretion by allowing expert witness testimony on non-mandatory “industry standards”; whether the trial court abused its discretion by allowing evidence of data concerning accidents at other subway stations;

Supreme Court, New York County, upon a jury verdict, awarded damages in favor of plaintiff and against defendant New York City Transit Authority; App. Div. affirmed.

DIAZ (VICTOR), PEOPLE v:

4TH Dept. App. Div. order of 4/26/19; affirmance; leave to appeal granted by Court of Appeals, 9/5/19; Rule 500.11 review pending;

Crimes--Sex Offenders---Sex Offender Registration Act--Level Two Sex Offender--Whether County Court erred in assessing points for forcible compulsion under risk factor 1;

Monroe County Court, determined that defendant is a level two risk pursuant to the Sex Offender Registration Act; App. Div. affirmed.

TOWN OF IRONDEQUOIT AND TOWN OF BRIGHTON, MATTER OF v COUNTY OF MONROE, et al.:

4TH Dept. App. Div. order of 8/22/19; reversal and dismissal;

Statutes--Construction--Whether maintenance repair and demolition charges assessed against real property by a town pursuant to Town Law §§ 64 (5-1) and 130 (16) that are not paid must be credited by the county to the town under Real Property Tax Law § 936;

Supreme Court, Monroe County, denied motion of defendants to dismiss the petition-complaint and granted the petition-complaint; App. Div. reversed the judgment, granted the motion of defendants to dismiss the petition-complaint, and dismissed the petition-complaint.

MANKO v GABAY & c., et al. (INDEX NO. 22148/13):

2ND Dept. App. Div. orders of 8/7/19; dismissal and affirmance; sua sponte examination of whether the orders appealed from finally determine the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Appeal--Appealable order;

Supreme Court, Kings County, granted motion of defendant Bernard H. Broome pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint insofar as asserted against (4/25/14 order); granted that branch of the motion of the defendants David A. Gabay, Law Offices of David A. Gabay, Law Offices of David A. Gabay, P.C., and Gabay Law Group, P.C., which was pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against them (7/9/14 order); upon an amended order, granted that branch of the motion of those defendants which was pursuant to CPLR 3211 (a)(5) to dismiss the complaint insofar as asserted against them, dismissing the complaints insofar as asserted against those defendants (10/30/14 order); denied those branches of plaintiff's motion which were pursuant to CPLR 5015 to vacate an order of the same court dated 7/9/14, and an amended order of the same court dated 10/8/14, pursuant to CPLR 3025(a) for leave to amend the complaint and for leave to renew plaintiff's opposition to that branch of the motion of defendants which was pursuant to CPLR 3211 (a)(5) to dismiss the complaint insofar as asserted against them, which had been granted in the order dated 7/9/14, and the amended order dated 10/8/14 (10/15/15 order); and thereafter, denied plaintiff's motion to vacate an order of the same court dated 2/23/15 (4/8/16 order); App. Div. dismissed the appeal from order of Supreme Court, dated 4/25/14; dismissed the appeal from the order of Supreme Court dated 7/9/14, and judgment of the same court, dated 10/30/14, and denied that branch of plaintiff's motion to strike certain portions of an appendix and brief; affirmed the order of Supreme Court dated 10/15/15 insofar as appealed from; and affirmed the order of Supreme Court dated 4/8/16 insofar as appealed from.