



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

October 22, 2021 through October 28, 2021

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.

MATTER OF BORELLI v CITY OF YONKERS:

2nd Dept. App. Div. order of 10/14/20; affirmance; leave to appeal granted by the Court of Appeals, 4/29/21;

Civil Service--Firefighters--Whether petitioners, retired disabled firefighters and fire officers, are entitled to compensation for night differential, check-in pay, and holiday pay under General Municipal Law § 207-a (2);

Supreme Court, Westchester County, denied that branch of the CPLR article 78 petition to annul so much of the respondent's determination as excluded from the supplemental benefits paid to the petitioners pursuant to General Municipal Law § 207-a (2) certain compensation paid to active firefighters for night differential, check-in pay, and holiday pay; App. Div. affirmed.

MATTER OF CITY OF YONKERS v YONKERS FIRE FIGHTERS:

2nd Dept. App. Div. order of 10/14/20; reversal; leave to appeal granted by the Court of Appeals 10/7/21;

Arbitration--Matters Arbitrable--Whether dispute between City of Yonkers and Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO was arbitrable under the parties' collective bargaining agreement;

Supreme Court, Westchester County, upon reargument, (1) in effect, vacated a 6/29/16 order of the same court denying the petition of the City of Yonkers to permanently stay arbitration and (2) granted the petition; App. Div. reversed the 10/17/16 order insofar as appealed from, and adhered to the 6/29/16 determination of Supreme Court denying the petition and, in effect, dismissing the proceeding.

MALDOVAN v COUNTY OF ERIE:

4th Dept. App. Div. order of 11/13/20; affirmance; 4th Dept. App. Div. order of 11/13/20; reversal; 4th Dept. App. order of 5/2/14; modification; 4th Dept. App. Div. order of 5/2/14; modification; leave to appeal granted by the Court of Appeals, 10/12/21;

Municipal Corporations--Tort Liability--Whether defendant County was properly granted summary judgment on the ground that no special duty existed; whether defendants County and Sheriff were properly granted summary judgment on grounds of governmental function immunity; whether defendants County and Sheriff could be held vicariously liable for the acts of deputy sheriffs;

Supreme Court, Erie County, denied plaintiff's motion for partial summary judgment; App. Div. affirmed; Supreme Court, Erie County, denied motion of defendants for summary judgment; App. Div. reversed order denying defendant's motion for summary judgment, granted defendant's motion, and dismissed the complaints; Supreme Court, Erie County, denied the motion of plaintiff to strike defendant County's answer, granted the motion of defendant County to dismiss the complaint, and dismissed the complaint; App. Div. modified 7/10/21 order by denying defendant County's motion in part and reinstating the first, second, fifth and sixth causes of action and, as so modified affirmed; Supreme Court, Erie County, granted the motion of defendant Sheriff to dismiss the complaint and dismissed the complaint; App. Div. modified 7/10/12 order by denying defendant Sheriff's motion in part and reinstating the third cause of action and the fourth cause of action to the extent that it is based on the third cause of action and, as so modified, affirmed.

SAGE SYSTEMS v LISS:

1st Dept. App. Div. order of 4/27/21; affirmance; leave granted by the Court of Appeals, 10/14/21;

Partnership--Partnership Agreement--Whether the indemnification clause in the parties' partnership agreement allows for the recovery of attorneys' fees in direct actions between the partners; whether the finding of the court in the dissolution action that decedent had unclear hands in bringing that action is the equivalent of a determination that decedent acted in bad faith;

Supreme Court, New York County, judgment in favor of plaintiff; Supreme Court, New

York County, granted plaintiff's motion for summary judgment and substitution, denied the estate's cross motion for summary judgment, and directed entry of judgment in favor of plaintiff in a sum certain; App. Div. affirmed judgment and dismissed appeal from 5/20/20 order as subsumed in the appeal from the judgment.

SINGH v CITY OF NY:

2nd Dept. App. Div. order of 12/30/20; affirmance and reversal; leave granted by the Court of Appeals on 10/12/21;

Municipal Corporations--Notice of Claim--Where plaintiffs asserted a General Business Law § 349 claim against the City of New York, whether plaintiffs were required to serve a notice of claim in accordance with General Municipal Law § 50-e; Covenants--Covenants of Good Faith and Fair Dealing--Whether plaintiffs stated a claim for breach of the covenant of good faith and fair dealing;

Supreme Court, Queens County, inter alia, (1) granted that branch of defendant's motion pursuant to CPLR 3211 (a) to dismiss the first cause of action on the grounds that the plaintiffs failed to comply with the requirements of General Municipal Law § 50-e and failed to state a cause of action, and (2) denied those branches of defendant's motion which were pursuant to CPLR 3211 (a) to dismiss the third cause of action and so much of the fifth cause of action as sought rescission of the subject contracts based upon breach of the implied covenant of good faith and fair dealing; App. Div. (1) affirmed the 9/21/17 order insofar as appealed from and (2) reversed the 9/21/17 order insofar as cross-appealed from, and granted those branches of defendants' motion which were pursuant to CPLR 3211 (a) to dismiss the third cause of action and so much as the fifth cause of action as sought rescission of the subject contracts based upon breach of the implied covenant of good faith and fair dealing.

MATTER OF STATE OF NY v PERB:

3rd Dept. App. Div. order of 5/14/20; confirmed determinations; leave granted by Court of Appeals on 10/14/21;

Civil Service--Public Employment Relations Board--Whether PERB's determination that the imposition of an application fee for promotional examinations was a mandatory subject of negotiation was rational and supported by substantial evidence; whether the Appellate Division applied the appropriate standard of review in resolving a purported question of statutory interpretation; whether PERB lacked authority or jurisdiction over the Department of Civil Service;

App. Div. confirmed determinations, dismissed petition, and provided that respondent PERB was entitled to a judgment of enforcement of its remedial order.