



*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

December 31, 2021 through January 6, 2022

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.

PEOPLE & c. v ALLEN (LAURENCE G.):

1st Dept. App. Div. order of 10/21/21; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved in the order appealed and whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Fraud--Martin Act--Whether the Martin Act claims are preempted by federal law; Limitation of Actions--Whether CPLR 213(9)'s six-year statute of limitations applies to plaintiff's Martin Act claims; alleged due process and contracts clause violations; Supreme Court, New York County judgment against defendants and relief defendants in plaintiff's favor; App. Div. inter alia, affirmed the judgment.

MATTER OF FORECLOSURE OF TAX LIENS:

3rd Dept. App. Div. order of 11/10/21; modification with two Justices dissenting; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Liens--Foreclosure--Whether a tax foreclosure proceeding may include a parcel where the owner is deceased at the time the action is commenced;

Supreme Court, Schenectady County, in a proceeding pursuant to RPTL article 11, among other things, partially denied petitioner's motion for summary judgment; App. Div. modified by reversing so much of the order as dismissed the petition against respondent Congress Holding Corp., and remitted the matter to Supreme Court for further proceedings, and, as so modified, affirmed.

PEOPLE v KAVAL (RUDOLPH):

2nd Dept. App. Div. order of 5/5/21; reversal; leave to appeal granted by Dillon, J., 12/13/21;

Crimes--Sentence--Where defendant was sentenced as a persistent violent felony offender and the People conceded on defendant's first appeal that defendant was not such an offender leading the Appellate Division to remit for resentencing, whether the resentencing court was permitted to resentence defendant, once again, as a persistent violent felony offender; whether the previous adjudication was the law of the case; whether upon remittitur Supreme Court should have permitted the People to present additional evidence pertaining to the same prior conviction that they failed to prove at the initial hearing;

Supreme Court, Queens County, convicted defendant of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree (two counts), upon a jury verdict, and imposed sentence upon his adjudication as a persistent violent felony offender; App. Div. modified judgment by vacating defendant's adjudication as a persistent violent felony offender and imposed sentence thereon, affirmed the judgement as so modified and remitted the matter to Supreme Court for resentencing; Supreme Court, Queens County, imposed resentence upon defendant's adjudication as a persistent violent felony offender; App. Div. reversed and remitted to Supreme Court to resentence defendant as a second violent felony offender.