



*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

**May 31, 2024 through June 6, 2024**

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 AUNGST v FAMILY DOLLAR:

APL-2024-00064

3rd Dept. App. Div. order of 11/16/23; affirmance; leave to appeal granted by the Court of Appeals, 5/23/24;

**Workers' Compensation—Whether the Board's "prevalence" theory was appropriately created by the Board based on the caselaw cited in support of that theory and, if so, whether it was properly applied by the Board and the Appellate Division; whether the Board and the Appellate Division properly concluded that claimant sustained a consequentially-related stroke;**

App. Div. affirmed a decision of the Workers' Compensation Board, filed February 15, 2022, which ruled, among other things, that claimant sustained an accidental injury arising out of and in the course of his employment.

PEOPLE ex rel. BARTA v MOLINA:

APL-2024-00060

2nd Dept. App. Div. order of 10/25/23; dismissal; leave to appeal granted by the Court of Appeals, 5/21/24;

**Habeas Corpus—Whether a criminal defendant ordered released under CPL 30.30(2)(a) can be subjected to electronic monitoring in the face of CPL 510.40(d)'s characterization of such monitoring as confinement in custody; whether the Appellate Division erred in holding that the exception to the mootness doctrine was inapplicable to the question whether defendant could be incarcerated awaiting the imposition of electronic monitoring following the trial court's order that he be released under CPL 30.30(2)(a);**

App. Div. dismissed application for a writ of habeas corpus.

CARLSON v COLANGELO:

APL-2024-00065

2nd Dept. App. Div. order of 11/15/23; modification; leave to appeal granted by the Court of Appeals, 5/23/24;

**Trusts—Whether the Appellate Division erred by violating the state's public policy of strictly construing in terrorem clauses by holding that a beneficiary, who is unrelated to a decedent and who has no legal capacity to contest or set aside a will or trust agreement, violated the in terrorem clause in a trust agreement by commencing an action to enforce and construe the terms of such trust agreement; whether the Appellate Division erred by violating the state's public policy of strict construction of in terrorem clauses by permitting a trustee of a revocable trust agreement to use an in terrorem clause as a means to distribute bequests only to herself, and against a beneficiary who sought to receive her bequests by the commencement of an action to enforce and construe the terms of such trust agreement;**

Supreme Court, Westchester County, in an action for, among other things, declaratory relief, granted defendants' motion for summary judgment dismissing so much of the complaint as related to certain real property and an income stream set forth in paragraph 6 (b) of the trust agreement for the Donald P. Dempsey Revocable Trust and, in effect, declaring that the plaintiff is not entitled to the income stream set forth in paragraph 6 (b) of the trust agreement for the Donald P. Dempsey Revocable Trust, and for an award of attorneys' fees, and denied the plaintiff's cross-motion for summary judgment on the first cause of action, in effect, on so much of the fourth cause of action as related to the real property and the income stream set forth in paragraph 6 (b) of the trust agreement for the Donald P. Dempsey Revocable Trust, and declaring that she is entitled to the income stream set forth in paragraph 6 (b) of the trust agreement for the Donald P. Dempsey Revocable Trust; App. Div. modified by deleting the provision of the order granting that branch of defendants' motion which for an award of attorneys' fees and substituting therefor a provision denying that branch of the motion, and, as so modified, affirmed.

NYP HOLDINGS v NYPD:

APL-2024-00057

1st Dept. App. Div. order of 10/12/23; modification; leave to appeal granted by the Court of Appeals, 5/16/24;

**Records—Freedom of Information Law—Whether the repeal of Civil Rights Law § 50-a, which previously exempted police disciplinary records from disclosure under the Freedom of Information Law, applies retroactively to records created prior to the repeal;**

Supreme Court, New York County, in a proceeding pursuant to CPLR article 78 to compel respondents to disclose substantiated and unsubstantiated disciplinary records of police officers identified in the subject FOIL requests, granted the petition; App. Div. modified to grant petitioners' request for attorney's fees and costs, remanded for further proceedings consistent with the decision, and otherwise affirmed.

MATTER OF WAGNER v NYCDOE:

APL-2024-00061

1st Dept. App. Div. order of 12/5/23; affirmation; leave to appeal granted by the Court of Appeals, 5/21/24;

**Records—Freedom of Information Law—Whether a Freedom of Information Law (FOIL) request can be denied as “not reasonably described” under New York Public Officers Law § 89(3) solely because an agency cannot successfully execute an electronic word search of its virtual files due to the large volume of records being searched by the agency; whether respondent failed to meet its burden of demonstrating that it made a “reasonable effort” under FOIL to retrieve the data maintained in its computer storage system in order to respond to the FOIL request;**

Supreme Court, New York County, denied the petition to annul respondent's determination dated October, 13, 2022, which denied petitioners' Freedom of Information Law (FOIL) request, directed the DOE to conduct an adequate search of responsive records, or in the alternative for a framed issues hearing, and dismissed the proceeding brought under CPLR article 78; App. Div. affirmed.

WEISBROD-MOORE v CAYUGA COUNTY:

APL-2024-00063

4th Dept. App. Div. order of 5/5/23; reversal; leave to appeal granted by the Court of Appeals, 5/21/24;

**Municipal Corporations—Tort Liability—Whether plaintiff, who was abused as a child while in foster care, failed to allege existence of special duty that would subject municipal defendant to tort liability;**

Supreme Court, Cayuga County, denied the motion of defendant Cayuga County to

dismiss the complaint against it; App. Div. reversed, granted the motion, and dismissed the complaint.