

COURT OF APPEALS NEW FILINGS

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

July 13, 2012 through July 19, 2012

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.

BLOOMER v SHAUGER:

3RD Dept. App. Div. order of 4/12/12; affirmance; leave to appeal granted by App. Div., 7/3/12; Rule 500.11 review pending;
ANIMALS - LIABILITY FOR INJURY RESULTING FROM CONTACT WITH DOMESTIC ANIMAL - NEGLIGENCE - VICIOUS PROPENSITY; SUMMARY JUDGMENT;
Supreme Court, Ulster County, among other things, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

HAGUE CORPORATION, MATTER OF v NEW YORK STATE EMPIRE ZONE DESIGNATION BOARD et al.:

3RD Dept. App. Div. order of 6/7/12; modification; sua sponte examination whether a substantial constitutional question is directly involved to support the cross appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - ELIGIBILITY TO PARTICIPATE IN EMPIRE ZONE PROGRAM - WHETHER DEPARTMENT OF ECONOMIC DEVELOPMENT VIOLATED THE STATE ADMINISTRATIVE PROCEDURE ACT IN ADOPTING REGULATIONS ON AN EMERGENCY BASIS - WHETHER THE CHALLENGED DETERMINATION TO UPHOLD THE REVOCATION OF PETITIONER'S CERTIFICATION AS AN EMPIRE ZONE BUSINESS ENTERPRISE WAS IRRATIONAL, ARBITRARY AND CAPRICIOUS - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT "THE MANNER IN WHICH THE [EMPIRE ZONE DESIGNATION] BOARD CONSIDERED PETITIONER'S APPEAL AFFORDED PETITIONER DUE PROCESS"; Supreme Court, Albany County dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to review a determination of respondent Empire Zone Designation Board revoking petitioner's certification as an empire zone business enterprise; App. Div. modified by reversing so much of the judgment as dismissed that part of the petition/complaint seeking a declaration that the April 2009 amendments to General Municipal Law § 959 may not be applied retroactively to January 1, 2008; granted the petition/complaint to that extent and declared that said amendments shall be applied prospectively only; and affirmed the judgment as so modified.

HUNTER, &c. et al. v NEW YORK CITY DEPARTMENT OF EDUCATION:

1ST Dept. App. Div. order of 5/29/12; reversal with dissents; Rule 500.11 review pending; SCHOOLS - STUDENTS - INJURY TO STUDENT - SUMMARY JUDGMENT - INFANT PLAINTIFF WHO WAS SITTING ON RUG IN HER SECOND GRADE CLASSROOM WAS INJURED WHEN HER CLASSMATE WHO WAS WRITING ON A NEARBY CHALKBOARD STEPPED BACK AND FELL ON TOP OF HER - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT SCHOOL WAS NOT SUBJECT TO LIABILITY FOR THE CLASSMATE'S ACT BECAUSE IT WAS "A THOUGHTLESS OR CARELESS ACT THAT COULD NOT HAVE BEEN PREVENTED BY REASONABLE SUPERVISION"; Supreme Court, Bronx County denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed and granted defendant's motion for summary judgment dismissing the complaint.

LAM (RAY), PEOPLE v:

App. Term, 1ST Dept. order of 12/23/11; affirmance; leave to appeal granted by Jones, J., 6/21/12; CRIMES - UNLICENSED GENERAL VENDING - ADMINISTRATIVE CODE OF CITY OF NEW YORK § 20-253 - SUFFICIENCY OF EVIDENCE - VENDING OF T-SHIRTS WITHOUT A LICENSE - WHETHER SELLING OF T-SHIRTS CONSTITUTED CONSTITUTIONALLY-PROTECTED SPEECH; Criminal Court of the City of New York, New York County convicted defendant of unlicensed general vending, and imposed sentence; App. Term affirmed.

TYSON v NAZARIAN:

4TH Dept. App. Div. order of 6/8/12; affirmance with dissents;
Rule 500.11 review pending;
NEGLIGENCE - AUTOMOBILE ACCIDENT - WHETHER PLAINTIFF RAISED AN
ISSUE OF FACT REGARDING SUSTAINING A "SERIOUS INJURY" UNDER
INSURANCE LAW § 5102(d) - WHETHER TREATING PHYSICIAN'S AFFIDAVIT
SUFFICIENTLY DIFFERENTIATED PLAINTIFF'S INJURIES FROM THE 2008
ACCIDENT FROM INJURIES PREVIOUSLY SUSTAINED BY HER IN A 2002
MOTORCYCLE ACCIDENT; SUMMARY JUDGMENT;
Supreme Court, Monroe County granted defendant's motion for
summary judgment, dismissed the complaint and denied plaintiff's
motion and cross motion for summary judgment; App. Div. affirmed.

WL, LLC, MATTER OF v NEW YORK STATE DEPARTMENT OF ECONOMIC
DEVELOPMENT:

3RD Dept. App. Div. order of 5/3/12; modification; sua sponte
examination whether a substantial constitutional question is
directly involved to support the cross appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - ELIGIBILITY TO PARTICIPATE
IN EMPIRE ZONE PROGRAM - WHETHER EMPIRE ZONE DESIGNATION BOARD
GAVE PETITIONER (1) ADEQUATE NOTICE OF ITS INTENT TO REVOKE
PETITIONER'S CERTIFICATION AS AN EMPIRE ZONE BUSINESS ENTERPRISE
AND (2) A MEANINGFUL OPPORTUNITY TO BE HEARD BEFORE MAKING THE
CHALLENGED DETERMINATION - WHETHER PETITIONER WAS ENTITLED TO A
HEARING BEFORE THE BOARD AND WHETHER THE MANNER IN WHICH THE
BOARD CONSIDERED PETITIONER'S APPEAL AFFORDED PETITIONER DUE
PROCESS; STANDARD OF REVIEW USED BY THE APPELLATE DIVISION;
DISMISSAL OF CAUSES OF ACTION SEEKING A DECLARATORY JUDGMENT;
EXCLUSION OF PETITIONER'S 2000 INVESTMENTS; WHETHER THE
CHALLENGED DETERMINATION WAS ARBITRARY AND CAPRICIOUS;
Supreme Court, Albany County dismissed petitioner's application,
in a combined proceeding pursuant to CPLR article 78 and action
for declaratory judgment, to review a determination of respondent
Empire Zone Designation Board revoking petitioner's certification
as an empire zone business enterprise; App. Div. modified by
reversing so much of the judgment as dismissed that part of the
petition/complaint seeking a declaration that the April 2009
amendments to General Municipal Law § 959 may not be applied
retroactively to January 1, 2008; granted the petition/complaint
to that extent and declared that said amendments shall be applied
prospectively; and affirmed the judgment as so modified.