

COURT OF APPEALS NEW FILINGS

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

August 3, 2012 through August 9, 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.

MATTER OF BOBAK (AIG CLAIMS SERVICES, INC., et al.):

4TH Dept. App. Div. order of 7/6/12, reversal; to bring up for review a 4/30/10 App. Div. order, with two Justices dissenting; sua sponte examination whether the 4/30/10 App. Div. order necessarily affects the 7/6/12 App. Div. order, and whether the stay granted by Supreme Court on remittal renders this appeal moot;

INSURANCE - AUTOMOBILE INSURANCE - UNDERINSURED MOTORIST ENDORSEMENT - IN AN APPEAL FROM JUDGMENT CONFIRMING AN ARBITRATION AWARD, WHETHER THE APPELLATE DIVISION ERRED IN REMITTING TO SUPREME COURT FOR A HEARING ON THE ISSUE OF INSURANCE COVERAGE;

Supreme Court, Erie County judgment confirming an arbitration award; App. Div. with two justices dissenting, retained jurisdiction over the appeal from the judgment, reserved decision and remitted to Supreme Court for further proceedings regarding insurance coverage; after Supreme Court held a hearing and granted a temporary stay on remittal, App. Div. reversed the judgment, dismissed the petition to confirm the arbitration award and vacated the arbitration award.

THE BRIGHTONIAN NURSING HOME, et al. v DAINES, &c., et al.:
Stipulation regarding award of attorney's fees under 42 USC § 1988, to bring up for review a 4th Dept. App. Div. order; affirmance; sua sponte examination whether the stipulation regarding an award of attorneys' fees finally determines the proceeding/action within the meaning of the Constitution;
CONSTITUTIONAL LAW - VALIDITY OF STATUTE - DUE PROCESS - STATUTE PROHIBITING PRIVATE NURSING HOMES FROM WITHDRAWING EQUITY OR TRANSFERRING ASSETS THAT IN THE AGGREGATE EXCEEDED 3% OF THEIR TOTAL ANNUAL REVENUE FOR PATIENT CARE SERVICES WITHOUT PRIOR APPROVAL OF COMMISSIONER OF HEALTH (PUBLIC HEALTH LAW § 2808[5][c]) - CHALLENGE TO RULING THAT STATUTE IS UNCONSTITUTIONALLY VAGUE, IMPROPERLY DELEGATES LEGISLATIVE AUTHORITY TO THE COMMISSIONER AND VIOLATES PLAINTIFFS'/PETITIONERS' SUBSTANTIVE DUE PROCESS RIGHTS - SEVERANCE OF STATUTE'S CATCHALL PHRASE;
Supreme Court, Monroe County, in a combined CPLR article 78 proceeding and declaratory judgment action, denied the cross motion of defendants-respondents to, among other things, dismiss the amended complaint/petition and declared unconstitutional Public Health Law § 2808(5)(c); App. Div. affirmed; thereafter, the parties entered into a stipulation regarding an award of attorneys' fees under 42 USC § 1988.

CALLISTRO, &c. v BEBBINGTON, et al.:
1ST Dept. App. Div. order of 4/3/12; affirmance and dismissal; leave to appeal granted by App. Div., 7/17/12; Rule 500.11 review pending;
PHYSICIANS AND SURGEONS - MALPRACTICE - ALLEGED HYPOXIC INJURY RESULTING FROM NONPERFORMANCE OF CESAREAN SECTION - SUMMARY JUDGMENT - WHETHER PLAINTIFF'S EXPERT AFFIDAVITS RAISED MATERIAL ISSUES OF FACT;
Supreme Court, Bronx County dismissed the complaint; App. Div. affirmed the judgment dismissing the complaint and dismissed, as subsumed in the appeal from the judgment, the appeal from the underlying Supreme Court order that granted defendants' motion for summary judgment.

CANGRO v MARANGOS:
1ST Dept. App. Div. order of 6/5/12; denial of motion for reargument; 1ST Dept. App. Div. order of 12/8/11; affirmance; sua sponte examination whether the 6/5/12 App. Div. order appealed from finally determines the action within the meaning of the Constitution, and whether the 12/8/11 App. Div. order appealed from has already been the subject of an appeal decided by this Court;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR REARGUMENT; Supreme Court, New York County denied plaintiff's motion for summary judgment and granted defendant's cross motion to dismiss the complaint; App. Div. affirmed and thereafter denied appellant's motion for reargument of the order of affirmance.

CUOMO, PEOPLE, &c. v GREENBERG et al.:

1ST Dept. App. Div. order of 5/8/12; modification; leave to appeal granted by App. Div., 7/17/12;

STATUTES - FEDERAL PREEMPTION - SALE OF SECURITIES - SCOPE OF FEDERAL PREEMPTION OF STATE BLUE SKY LAWS - WHETHER ATTORNEY GENERAL'S MARTIN ACT AND EXECUTIVE LAW CLAIMS TO ENJOIN FRAUDULENT PRACTICES ARE PREEMPTED; WHETHER THE ATTORNEY GENERAL HAS THE AUTHORITY TO BRING THESE MARTIN ACT AND EXECUTIVE LAW CLAIMS; SUMMARY JUDGMENT;

Supreme Court, New York County, as relevant here, denied defendants' motions for summary judgment dismissing the Martin Act and Executive Law § 63(12) claims as against them, and granted the Attorney General's motion for summary judgment on the issue of liability with respect to one of the two challenged transactions; App. Div. modified to deny the Attorney General's motion and otherwise affirmed.

HUGHES (FRANKLIN), PEOPLE v:

2ND Dept. App. Div. order of 4/19/12; affirmance; leave to appeal granted by Lippman, Ch. J., 6/22/12;

CRIMES - POSSESSION OF WEAPON - POSSESSION OF FIREARM IN HOME BY DEFENDANT PREVIOUSLY CONVICTED OF A CRIME - WHETHER DEFENDANT'S CONVICTION IS CONSTITUTIONAL WHERE HE POSSESSED A HANDGUN WITHIN HIS HOME FOR THE PURPOSE OF SELF-DEFENSE - PENAL LAW §§ 265.02(1) and 265.03(3);

Nassau County Court convicted defendant, after a nonjury trial, of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.

JAMES, &c, et al. v LORAN REALTY V CORPORATION, et al.:

1ST Dept. App. Div. order of 6/23/11; affirmance; leave to appeal granted by App. Div., 5/24/12; Rule 500.11 review pending;

NEGLIGENCE - INJURY RESULTING FROM EXPOSURE OF INFANT TO LEAD-BASED PAINT - WHETHER CAUSE OF ACTION SEEKING TO PIERCE THE CORPORATE VEIL OF THE BUILDING OWNER WAS PROPERLY DISMISSED;

Supreme Court, Bronx County, after a nonjury trial, dismissed plaintiffs' second cause of action seeking to pierce the corporate veil of Loran Realty V Corp. and hold the individual defendants personally liable for plaintiffs' injuries; App. Div. affirmed.

ROZZ, MATTER OF v NASSAU COUNTY DEPARTMENT OF ASSESSMENT, et al.:

2ND Dept. App. Div. order of 6/20/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - ASSESSMENT - REAL PROPERTY TAX LAW - CPLR ARTICLE 78
PROCEEDING AND ACTION FOR DECLARATORY RELIEF - ALLEGED FAILURE BY
RESPONDENT TO COMPLY WITH PROCEDURES IN REAL PROPERTY TAX LAW § 556
REGARDING FILING AND INVESTIGATION OF PETITIONER'S APPLICATION FOR
A TAX REFUND; PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS;
FREEDOM OF INFORMATION LAW;

Supreme Court, Nassau County, among other things, denied the CPLR
article 78 petition and dismissed the proceeding; App. Div.
affirmed.

WEEKS WOODLANDS ASSOCIATION, INC., et al., MATTER OF v DORMITORY
AUTHORITY OF THE STATE OF NEW YORK, et al.:

1ST Dept. App. Div. order of 5/31/12, with two Justices dissenting;
dismissal; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - ZONING - NEIGHBORS OF CONSTRUCTION PROJECT
TO MODERNIZE A HOSPITAL FOR DISABLED CHILDREN SEEK TO ENJOIN
CONSTRUCTION BASED ON ALLEGED NONCOMPLIANCE WITH ZONING, NOTICE AND
SEQRA REQUIREMENTS; DISMISSAL OF APPEALS FOR MOOTNESS DUE TO
ADVANCED STATUS OF CONSTRUCTION COMPLETION; INJUNCTIONS;

Supreme Court, New York County, among other things, denied
petitioners' motion for a preliminary injunction and granted the
cross motion of respondent New York Department of Health to dismiss
the petition as against it; thereafter, Supreme Court granted
respondent Dormitory Authority's motion for summary judgment
declaring that it had the authority to provide financing for the
subject construction project, granted the cross motion of
respondent New York City Department of Buildings for summary
judgment dismissing the proceeding as against it, and denied
petitioners' motion for summary judgment with respect to the
applicability of section 24-111(a) of the Zoning Resolution of the
City of New York; App. Div. dismissed appeals as moot.