

COURT OF APPEALS NEW FILINGS

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

**September 21, 2012 through September 27, 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.**

BELZBERG, et al., MATTER OF v VERUS INVESTMENTS HOLDINGS, INC.:  
1<sup>ST</sup> Dept. App. Div. order of 5/24/12; reversal; leave to appeal granted by Court of Appeals, 9/18/12;

ARBITRATION - STAY OF ARBITRATION - PROCEEDING PURSUANT TO CPLR ARTICLE 75 TO PERMANENTLY STAY ARBITRATION - WHETHER A NONSIGNATORY TO AN ARBITRATION AGREEMENT SHOULD BE ESTOPPED FROM AVOIDING ARBITRATION BECAUSE HE DIRECTLY BENEFITTED UNDER THE AGREEMENT;

Supreme Court, New York County, among other things, granted the petition to permanently stay the arbitration as to petitioner Belzberg, and denied the cross petition to compel Belzberg to arbitrate; App. Div. reversed, denied the petition and granted the cross petition.

NEW YORK STATE OFFICE OF VICTIM SERVICES o/b/o BALOGH, et al.,  
MATTER OF v RAUCCI et al.:

3<sup>RD</sup> Dept. App. Div. order of 6/7/12; reversal; leave to appeal granted by Court of Appeals, 9/18/12;

EMPLOYMENT RELATIONSHIPS - RETIREMENT AND PENSION BENEFITS - WHETHER RETIREMENT AND SOCIAL SECURITY LAW § 110 AND CPLR 5205 (c) PROTECT STATE PENSIONS FROM SEIZURE FOR CRIME VICTIMS UNDER EXECUTIVE LAW § 632-a ("SON OF SAM LAW"); PRISONS AND PRISONERS; PRELIMINARY INJUNCTION;

Supreme Court, Albany County denied petitioner's motion for a preliminary injunction in a proceeding pursuant to Executive Law § 632-a; App. Div. reversed, granted petitioner's motion, and remitted the matter to Supreme Court for further proceedings.

CLERMONT (JOCELYN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 5/30/12; affirmance; leave to appeal granted by Miller, J., 9/13/12;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE SUPPRESSION HEARING;

Supreme Court, Queens County convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree and two counts of criminal possession of a weapon in the third degree and imposed sentence; App. Div. affirmed and remitted to Supreme Court for issuance of an amended presentence report and sentence and commitment sheet.

FUNDAMENTAL LONG TERM CARE HOLDINGS, LLC, et al. v CAMMEBY'S FUNDING, LLC:

1<sup>ST</sup> Dept. App. Div. order of 2/7/12; affirmance; leave to appeal granted by Court of Appeals, 9/11/12;

CONTRACTS - PAROL EVIDENCE RULE - MERGER CLAUSE - OPTION AGREEMENT REGARDING OWNERSHIP INTEREST IN A LIMITED LIABILITY COMPANY - WHETHER OPTION HOLDER'S RIGHTS ARE TO BE DETERMINED UNDER THE OPTION AGREEMENT ALONE OR ARE SUBJECT TO THE MEMBERSHIP REQUIREMENTS IN THE LLC'S OPERATING AGREEMENT;

Supreme Court, New York County, among other things, dismissed the complaint and directed the Clerk to enter judgment declaring that plaintiff Fundamental Long Term Care Holdings, LLC must issue ownership of 1/3 of its equity units to defendant Cammeby's Funding LLC's designee without regard to the capital contribution requirement in the LLC operating agreement; App. Div. affirmed.

HAMM (DARYL), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/8/12; modification; leave to appeal granted by Read, J., 9/12/12;

CRIMES - WITNESSES - WHETHER THE TRIAL COURT'S RULINGS CURTAILING CROSS EXAMINATION OF A DOCTOR AND OF THE VICTIM'S FATHER DEPRIVED DEFENDANT OF THE RIGHT TO PRESENT A DEFENSE AND THE RIGHT TO A FAIR TRIAL; DUE PROCESS;

Supreme Court, Erie County convicted defendant, upon a nonjury verdict, of assault in the first degree and assault in the second degree; App. Div. modified by vacating that part convicting defendant of assault in the second degree and dismissing count three of the indictment.

W. (KEVIN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/10/12; reversal; leave to appeal granted by Read, J., 9/12/12;

CRIMES - SUPPRESSION HEARING - WHETHER PEOPLE v CRANDALL

(69 NY2d 459 [1987]) PERMITS A TRIAL COURT TO RE-OPEN A SUPPRESSION HEARING FOR THE PEOPLE TO ADDUCE ADDITIONAL EVIDENCE WHERE THE TRIAL COURT IS REVIEWING A REPORT OF A JUDICIAL HEARING OFFICER; WHETHER REINSTATEMENT OF ORIGINAL SUPPRESSION RULING REQUIRED DISMISSAL OF CHARGE OF RESISTING ARREST;

Supreme Court, Queens County convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree and resisting arrest, adjudicated defendant a youthful offender, and imposed sentence; App. Div. reversed, granted that branch of defendant's omnibus motion which was to suppress physical evidence, dismissed the indictment and remitted the matter to Supreme Court for the purpose of entering an order in its discretion pursuant to CPL 160.50.

VILLARIN v THE RABBI HASKIN LOOKSTEIN SCHOOL, &c.:

1<sup>ST</sup> Dept. App. Div. order of 4/12/12; affirmance with dissents; leave to appeal granted by App. Div., 9/11/12;

LABOR - WHISTLEBLOWER LAW - SCHOOL NURSE REPORTING SUSPECTED CHILD ABUSE - WHETHER ALLEGATIONS THAT DEFENDANT SCHOOL TERMINATED PLAINTIFF'S EMPLOYMENT AS THE SCHOOL'S NURSE FOR REPORTING ONE INCIDENT OF SUSPECTED CHILD ABUSE IN ACCORDANCE WITH SOCIAL SERVICES LAW § 413 STATES A CAUSE OF ACTION FOR RETALIATORY TERMINATION UNDER LABOR LAW § 740 - MEANING OF "SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY";

Supreme Court, New York County, among other things, denied defendant's motion to dismiss the cause of action for retaliatory discharge; App. Div. affirmed.