

COURT OF APPEALS NEW FILINGS

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

**December 7, 2012 through December 13, 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.**

BARNES, MATTER OF v FINOCCHIO, et al.:

4<sup>TH</sup> Dept. App. Div. order of 9/28/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING JUDGMENT DENYING A CPLR ARTICLE 78 PETITION;

Supreme Court, Monroe County denied a CPLR article 78 petition; App. Div. affirmed.

BAY CREST ASSOCIATION, INC. v PAAR, et al.:

2<sup>ND</sup> Dept. App. Div. order of 10/10/12; dismissal in part and affirmance in part; sua sponte examination whether defendant Louis Paar is aggrieved from so much of the App. Div. order as dismissed his appeal to that court upon the ground that he was not aggrieved by a portion of the Supreme Court order, whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

JUDGMENTS - RELIEF FROM JUDGMENT - FAILURE TO ESTABLISH STATUTORY GROUNDS FOR VACATUR; SATISFACTION - COLLECTION OF UNPAID ASSESSMENTS OWED TO HOMEOWNERS' ASSOCIATION;

Supreme Court, Suffolk County, among other things, granted plaintiff's motion for payment pursuant to CPLR 2606; denied defendants' cross motion for relief from the judgment pursuant to CPLR 5015; denied defendants' motion brought by order to show cause signed on 11/23/10; and denied defendants' motion for criminal and civil contempt and legal malpractice; App. Div. 1) dismissed the appeal by defendant Louis Paar from so much of the 12/16/10 Supreme Court order as granted that branch of plaintiff's motion which was pursuant to CPLR 2606 for payment from funds belonging to defendant Suzanne De Lisi and held in two accounts by the Suffolk County Treasurer in satisfaction of a judgment insofar as entered against her, upon the ground that defendant Louis Paar is not aggrieved by that part of the order; 2) dismissed as academic the appeal from so much of the 12/16/10 Supreme Court order as denied that branch of defendants' motion which was for release to them of the funds held in the two accounts by the Suffolk County Treasurer; and 3) affirmed the 12/16/10 Supreme court order insofar as reviewed.

CAPRIO et al. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE:

Supreme Court, New York County judgment of 11/5/12; sua sponte examination whether a direct appeal lies pursuant to CPLR 5601(b)(2);

TAXATION - PERSONAL INCOME TAX - DUE PROCESS CHALLENGE TO ALLEGED RETROACTIVE APPLICATION OF 2010 AMENDMENT TO SECTION 632(a)(2) OF THE NEW YORK TAX LAW AS APPLIED TO PLAINTIFFS WHO WERE ASSESSED ADDITIONAL TAXES FOR THE 2007 AND 2008 TAXABLE YEARS;

Supreme Court, New York County, dismissed the complaint seeking a judgment declaring certain provisions of the New York Tax Law invalid as applied to plaintiffs.

EXPEDIA, INC., et al. v CITY OF NEW YORK DEPARTMENT OF FINANCE, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/29/12; reversal;

TAXATION - HOTEL AND MOTEL OCCUPANCY TAX - EXTENSION OF TAX TO ENCOMPASS SERVICE FEES CHARGED BY TRAVEL INTERMEDIARIES - CONSTITUTIONALITY;

Supreme Court, New York County granted defendants' motion to dismiss the first cause of action seeking a declaration that Local Law No. 43 (2009) of the City of New York violates the Constitution of the State of New York and declared in favor of the New York City Department of Finance and the City of New York that there is no constitutional violation; App. Div. reversed, denied defendants' motion and, upon a search of the record, declared that Local Law No. 43 violates the New York State Constitution.

SALH, MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK et al.

3<sup>RD</sup> Dept. App. Div. judgment of 10/25/12; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - BUSINESS AND FINANCIAL TAX - BULK SALES - LIABILITY OF PURCHASER OF BUSINESS FOR TAX DEFICIENCY OF PREVIOUS OWNER - EQUITABLE ESTOPPEL;

App. Div. confirmed determination of the Tax Appeals Tribunal which sustained a sales and use tax assessment imposed under Tax Law articles 28 and 29, and dismissed the CPLR article 78 petition.

STATE OF NEW YORK, MATTER OF v FLOYD Y.:

1<sup>ST</sup> Dept. App. Div. order of 11/8/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - SEX OFFENDER MANAGEMENT AND TREATMENT ACT (SOMTA) - WHETHER THE TRIAL COURT ERRED BY PERMITTING THE STATE'S EXPERT WITNESS TO TESTIFY, WITHOUT LIMITATION, AS TO HEARSAY STATEMENTS THAT FORMED THE BASIS OF HER OPINION THAT RESPONDENT HAS A MENTAL ABNORMALITY, INCLUDING STATEMENTS REGARDING ACTS THAT DID NOT RESULT IN A CRIMINAL CHARGE OR CONVICTION - ALLEGED DUE PROCESS VIOLATION; Supreme Court, New York County, upon a jury finding of mental abnormality, and upon a finding made after a dispositional hearing that respondent is a dangerous sex offender requiring confinement, committed him to a secure treatment facility; App. Div. affirmed.

TREISTMAN, MATTER OF v CAYLEY:

Family Court, Ulster County order of 6/25/12; 3<sup>RD</sup> Dept. App. Div. order of 10/25/12; denials of motions; sua sponte examination whether the appeal is timely, whether the orders appealed from finally determine the proceeding within the meaning of the Constitution, whether a direct appeal lies pursuant to CPLR 5601(b)(2) and whether a substantial constitutional question is directly involved to support an appeal as of right;

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER  
DENYING PETITIONER'S MOTIONS FOR LEAVE TO APPEAL TO THAT COURT  
AND FOR A STAY PENDING APPEAL - CHALLENGE TO FAMILY COURT ORDER  
DENYING MOTIONS FOR SANCTIONS AND ENLARGEMENT OF TRIAL DATE  
PENDING FURTHER DISCOVERY;

Family Court, Ulster County denied petitioner's motion for  
sanctions and motion for enlargement of the trial date pending  
further discovery; App. Div. denied petitioner's motions for  
leave to appeal to the App. Div. and for a stay pending appeal.