

COURT OF APPEALS NEW FILINGS

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

**December 21, 2012 through December 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.**

GOLDEN CITY COMMERCIAL BANK v 207 SECOND AVENUE REALTY CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/8/12; modification; sua sponte examination whether the App. Div. order finally determines the action and whether a substantial constitutional question is directly involved to support the appeal taken as of right; MORTGAGES - FORECLOSURE - RECEIVER - CHALLENGE TO TIME PERIOD OF RECEIVERSHIP AND PAYMENT OF FUNDS BY RECEIVER;

Supreme Court, New York County, among other things, granted the motion of nonparty Chang for release of funds held by nonparty Zapson as receiver, and, upon reargument and renewal, denied Zapson's motion to settle his supplemental account for the period from 8/7/07 through 5/27/10 and to bring it current; App. Div. modified to give Zapson leave to pay nonparty Lawrence Mandelker \$111,569.65 before releasing the remainder of the funds to Chang's attorney.

NAVILLUS TILE, INC., d/b/a NAVILLUS CONTRACTING, MATTER OF v LC MAIN, LLC:

2<sup>ND</sup> Dept. App. Div. order of 9/12/12; reversal; leave to appeal granted by Court of Appeals, 12/18/12;

LIENS - MECHANIC'S LIEN - PROCEEDINGS TO EXTEND TWO MECHANIC'S LIENS - EXTENSION OF TIME TO EXTEND LIENS (CPLR 2004);

Supreme Court, Westchester County, in orders dated 2/14/11, upon renewal and reargument, adhered to two orders dated 8/9/10 denying two petitions to extend, for a period of one year, the terms of two mechanic's liens filed in connection with real property; App. Div. reversed the orders dated 2/14/11, vacated the determinations in the orders dated 8/9/10, and granted the petitions nunc pro tunc to 5/19/10.

25 AVENUE C NEW REALTY, LLC, et al. v ALEA NORTH AMERICA INSURANCE COMPANY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/12/12; modification; leave to appeal granted by App. Div., 12/6/12; Rule 500.11 review pending; INSURANCE - DUTY TO DEFEND AND INDEMNIFY - UNDERLYING PERSONAL INJURY ACTION - INCORRECT DATE OF INJURY IN COMPLAINT - INSURER WHOSE COVERAGE WAS NOT IN EFFECT AT ACTUAL TIME OF INJURY TENDERED NOTICE OF LAWSUIT TO INSURER WHOSE COVERAGE WAS IN EFFECT AT RELEVANT TIME - PLAINTIFFS CLAIM COVERAGE BY ESTOPPEL WHERE ONE INSURER'S LATE DISCLAIMER OF COVERAGE RESULTED IN INSUREDS' LOSS OF COVERAGE FROM OTHER INSURER; TIMELINESS OF INSUREDS' NOTICE TO PROPER INSURER; SUMMARY JUDGMENT;

Supreme Court, Bronx County granted plaintiffs' motion for summary judgment to the extent of declaring that defendant Merrimack Mutual Fire Insurance Company is obligated to defend and indemnify plaintiffs in an underlying personal injury action, granted defendant Alea North America Insurance Company's cross motion for summary judgment dismissing the complaint and all cross claims against it, and denied Merrimack's cross motion for summary judgment; App. Div. modified to the extent of denying plaintiffs' motion for summary judgment and granting defendant Merrimack's cross motion for summary judgment to the extent of declaring that Merrimack is not obligated to defend and indemnify plaintiffs in the underlying personal injury action.