

COURT OF APPEALS NEW FILINGS

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

**June 7, 2013 through June 13, 2013**

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.**

CAPRUSO v VILLAGE OF KINGS POINT (AND ANOTHER ACTION):

2<sup>ND</sup> Dept. App. Div. order of 1/30/13; modification; leave to appeal granted by Court of Appeals, 6/4/13;

LIMITATION OF ACTIONS - WHEN CAUSE OF ACTION ACCRUES - CONTINUING WRONG - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THESE ACTIONS WERE NOT BARRED BY THE STATUTE OF LIMITATIONS UPON THE GROUND THAT "A MUNICIPALITY'S CURRENT AND ONGOING USE OF DEDICATED PARKLAND FOR NONPARK PURPOSES WITHOUT THE APPROVAL OF THE STATE LEGISLATURE IN VIOLATION OF THE PUBLIC TRUST DOCTRINE IS A CONTINUING WRONG THAT THE MUNICIPALITY HAS THE ABILITY TO CONTROL AND ABATE"; WHETHER THE INJUNCTIVE RELIEF AWARDED WAS IN EXCESS OF THAT REQUESTED IN THE COMPLAINT OR WAS OTHERWISE UNDULY BROAD;

Supreme Court, Nassau County granted plaintiffs' motion for summary judgment on the complaint, dismissed defendants' affirmative defenses, permanently enjoined defendants from denying or obstructing existing access to a certain park unless and until specific approval is obtained from the State Legislature, directed defendants to remove from a certain portion of the subject park all materials, equipment, and physical alterations, including buildings and other structures, under the control of defendant Village of Kings Point, and directed the defendants to pay plaintiffs' reasonable attorneys' fees and other expenses in an amount to be determined; App. Div. modified the order and interlocutory judgment by deleting the provision thereof directing the defendants in Action No. 1 to pay the plaintiffs' reasonable attorneys' fees and other expenses in that action.

CLEMENTE BROS. CONTRACTING CORP. v HAFNER-MILAZZO:

2<sup>ND</sup> Dept. App. Div. order of 11/14/12; affirmance; leave to appeal granted by Court of Appeals, 6/4/13;

BILLS, NOTES AND CHECKS - FORGED INDORSEMENT - BANK CUSTOMER'S FAILURE TO DISCOVER AND REPORT ALLEGED FORGERIES WITHIN ONE YEAR AFTER BANK SENT CUSTOMER STATEMENTS OF THE ACCOUNT AND CANCELLED CHECKS (UCC 4-406) - APPLICABILITY OF LIMITATIONS PERIOD CONTAINED IN UCC 4-406 - WHETHER A BANK AND ITS CUSTOMER MAY SHORTEN THE ONE-YEAR STATUTORY TIME PERIOD PROVIDED IN UCC 4-406; Supreme Court, Suffolk County granted defendant Capital One, N.A.'s motion for summary judgment dismissing the complaint insofar as asserted against it and for summary judgment on its counterclaims (2/10/11 order), and awarded judgment in favor of defendant Capital One, N.A. and against plaintiffs in the principal sum of \$1,146,262.90 (2/24/11 judgment); App. Div. affirmed.

ZHAI v CHEMICAL BANK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/20/10; denial of motion; sua sponte examination whether the appeal was timely taken, whether the orders appealed from finally determine the action within the meaning of the Constitution and whether any jurisdictional basis exists to support an appeal as of right pursuant to CPLR 5601(b)(1) and (2);

COURTS - CHALLENGE TO SUBJECT MATTER JURISDICTION OF CIVIL COURT; Supreme Court, New York County transferred the cause bearing Index No. 114299/96 to Civil Court of the City of New York; Civil Court of the City of New York granted plaintiff's motion to vacate a Supreme Court order dismissing plaintiff's second cause of action entered on plaintiff's default; App. Div., among other things, denied plaintiff's motion to unite all parties at an extraordinary trial term and empanel a grand jury to assess civil and criminal liabilities.