

COURT OF APPEALS NEW FILINGS

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

January 31, 2014 through February 5, 2014

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.

BDC FINANCE LLC v BARCLAYS BANK PLC:

1ST Dept. App. Div. order of 10/24/13; modification; leave to appeal granted by App. Div., 1/23/14;
CONTRACTS - CONSTRUCTION - TOTAL RETURN SWAP AGREEMENT - FAILURE TO TIMELY REMIT PAYMENT OF EXCESS COLLATERAL PURSUANT TO COLLATERAL CALL - WHETHER CONTRACT PERMITTED BANK TO DISPUTE AMOUNT OF HEDGE FUND'S COLLATERAL CALL BEFORE REMITTING PAYMENT OF DISPUTED RETURN AMOUNT - EFFECT OF "DELIVERY OF COLLATERAL" CLAUSE;

Supreme Court, New York County, denied plaintiff's motion for summary judgment on liability on its breach of contract claim, granted in part defendant's motion for summary judgment dismissing that claim, and denied defendant's motion as to its breach of contract counterclaims; App. Div. modified to grant plaintiff's motion for summary judgment on liability on its breach of contract claim, and denied defendant's motion for summary judgment dismissing the breach of contract claim.

GM COMPONENTS HOLDINGS, LLC v TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY:

4th Dept. App. Div. order of 12/27/13; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

EMINENT DOMAIN - PUBLIC USE - EXPANSION OF INDUSTRIAL PARK - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT RESPONDENT'S DETERMINATION TO EXERCISE EMINENT DOMAIN POWER WAS RATIONALLY RELATED TO A CONCEIVABLE PUBLIC PURPOSE; ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL QUALITY REVIEW - WHETHER RESPONDENT TOOK THE REQUISITE "HARD LOOK" AND IMPROPERLY SEGMENTED THE REVIEW PROCESS;

App. Div. confirmed respondent's determination to condemn certain real property by eminent domain.

COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK, B.A. v NAVARRO:

1st Dept. App. Div. order of 1/16/14; reversal with dissents; CONTRACTS - GUARANTEE TO PAY OBLIGATIONS OF COMPANY ARISING UNDER A PURCHASE AGREEMENT - WHETHER DEFAULT JUDGMENT OBTAINED AGAINST COMPANY CAN BE A VALID "OBLIGATION" SUBJECT TO THE GUARANTEE IF THE JUDGMENT WAS OBTAINED BY COLLUSION - WHETHER WAIVER OF DEFENSES IN GUARANTEE PRECLUDES GUARANTOR FROM ARGUING THAT NO VALID OBLIGATION EXISTED BECAUSE OF COLLUSION - SUMMARY JUDGMENT IN LIEU OF COMPLAINT;

Supreme Court, New York County, denied plaintiff's motion for summary judgment in lieu of complaint; App. Div. reversed, granted the motion for summary judgment and directed the clerk to enter judgment accordingly.