

COURT OF APPEALS NEW FILINGS

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

May 15, 2015 through May 21, 2015

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.

ADLER v QPI-VIII, LLC:

2ND Dept. App. Div. order of 1/14/15; reversal; leave to appeal granted by Court of Appeals, 4/7/15;

NEGLIGENCE - MAINTENANCE OF PREMISES - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE ALLEGED DEFECT OF STEP WAS TRIVIAL AS A MATTER OF LAW AND DID NOT POSSESS THE CHARACTERISTICS OF A TRAP OR NUISANCE - DEFENDANTS' ENTITLEMENT TO SUMMARY JUDGMENT DISMISSING THE COMPLAINT;

Supreme Court, Queens County, denied defendants' motion for summary judgment dismissing the complaint in an action to recover damages for personal injuries; App. Div. reversed and granted defendants' motion to dismiss the complaint.

GOVERNMENT EMPLOYEES INSURANCE CO., et al. v AVANGUARD MEDICAL GROUP:

2ND Dept. App. Div. order of 2/18/15; reversal; leave to appeal granted by Court of Appeals, 5/14/15;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - NECESSARY EXPENSES - FACILITY FEE FOR OFFICE-BASED SURGERY - WHETHER THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT INSURANCE LAW § 5102 AND 11 NYCRR 68.5 DO NOT REQUIRE INSURERS TO PAY FACILITY FEES TO OFFICE-BASED SURGERY PRACTICES;

Supreme Court, Nassau County, denied plaintiffs' motion for summary judgment declaring that they are not required to reimburse defendant for facility fees as payable first-party benefits under Insurance Law § 5102; App. Div. reversed, granted plaintiffs' motion for summary judgment declaring that they are not required to reimburse defendant for facility fees as payable first-party benefits under Insurance Law § 5102, and remitted the matter to Supreme Court for the entry of a judgment declaring that plaintiffs are not required to reimburse defendant for facility fees as payable first-party benefits under Insurance Law § 5102.

HODGE v COUNTY OF WESTCHESTER:

Supreme Court, Westchester County order of 3/4/15; grant of summary judgment; sua sponte examination whether the only question involved on the appeal is the constitutional validity of a statutory provision;

NEGLIGENCE - DISMISSAL OF COMPLAINT AGAINST COUNTY BROUGHT BY INMATE ASSAULTED BY ANOTHER INMATE AT COUNTY JAIL - WHETHER SUPREME COURT CORRECTLY GRANTED COUNTY SUMMARY JUDGMENT DISMISSING THE COMPLAINT;

Supreme Court granted defendant's motion for summary judgment and directed the clerk to dismiss the complaint in this personal injury action brought by an inmate at the Westchester County jail who was assaulted by another inmate.

KEYSPAN GAS EAST CORPORATION v MUNICH REINSURANCE AMERICA, INC., et al.:

1ST Dept. App. Div. order of 12/2/14; modification; sua sponte examination whether substantial grounds support the claim that the order appealed from violates this Court's remittitur;

INSURANCE - DISCLAIMER OF COVERAGE - WAIVER OF LATE NOTICE DEFENSE - WHETHER THE DECEMBER 2, 2014 APPELLATE DIVISION ORDER VIOLATES THIS COURT'S JUNE 10, 2014 REMITTITUR;

Supreme Court, New York County, as relevant here, upon renewal, granted so much of defendants-insurers' motions for summary judgment as sought a declaration that defendants have no duty to defend or indemnify plaintiffs regarding environmental damage claims against the Bay Shore manufactured gas plant site, on the ground of plaintiffs' failure to provide timely notice under the respective policies, but denied the motions as to other sites; App. Div. modified the order to deny the motions as to the Bay Shore site and vacate the declaration, and otherwise affirmed;

thereafter, the Court of Appeals reversed and remitted the case to the App. Div. for further proceedings in accordance with the Court's opinion; upon remittitur, the App. Div. modified the 2/2/12 order to deny the motion and vacate the declaration as to the Bay Shore site, on the ground that triable issues of fact exist as to whether the insurers waived their common-law defense of late notice, and remanded the matter to the motion court for further proceedings consistent with the App. Div.'s decision and order, and otherwise affirmed.

NOWLIN v VANROON et al.:

4TH Dept. App. Div. orders of 4/14/15 and 11/21/14; denied motion to vacate dismissal of appeal and denied motion for leave to appeal to Court of Appeals; sua sponte examination whether the 4/14/15 and 11/21/14 App. Div. orders finally determine the action within the meaning of the Constitution, and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDERS THAT (1) DENIED PLAINTIFF'S MOTION FOR REARGUMENT OR LEAVE TO APPEAL TO THE COURT OF APPEALS FROM A PRIOR APPELLATE DIVISION ORDER AND (2) DENIED PLAINTIFF'S MOTION AS UNTIMELY INsofar AS IT SOUGHT TO VACATE THE DISMISSAL OF HIS APPEAL FOR FAILURE TO PERFECT AND DISMISSED THE MOTION FOR AN EXTENSION OF TIME TO PERFECT THE APPEAL;

App. Div. denied plaintiff's motion as untimely insofar as it sought to vacate dismissal of the appeal and otherwise dismissed the motion; thereafter, App. Div. denied plaintiff's motion for reargument or leave to appeal to the Court of Appeals from the 11/21/14 order.

PLOTCH v CITIBANK, N.A.:

2ND Dept. App. Div. order of 9/10/14; affirmance; leave to appeal granted by Court of Appeals, 5/5/15;

CONDOMINIUMS AND COOPERATIVES - LIENS - PRIORITY - WHETHER TWO MORTGAGES, CONSOLIDATED PRIOR TO THE FILING OF A LIEN FOR UNPAID CONDOMINIUM COMMON CHARGES, QUALIFY AS THE FIRST MORTGAGE OF RECORD FOR PURPOSES OF REAL PROPERTY LAW ART. 9-B;

Supreme Court, Richmond County, denied plaintiff's motion for summary judgment on the complaint and granted that branch of defendant's cross motion which was for summary judgment declaring that its consolidation agreement is the first mortgage of record against the subject property; App. Div. affirmed and remitted the entry of appropriate judgment.

PEOPLE ex rel. REID v C. AUGUSTUS, etc.:

2ND Dept. App. Div. order of 2/2/15; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHETHER THE APPELLATE DIVISION ERRED IN DENYING THE PETITION SEEKING A WRIT OF HABEAS CORPUS;

App. Div. denied petitioner's application for a writ of habeas corpus.

ZANETTI, et al., MATTER OF v NEW YORK STATE TAX APPEALS
TRIBUNAL, et al.:

3RD Dept. App. Div. judgment of 5/7/15; confirmation of Tax Appeals Tribunal determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - PERSONAL INCOME TAX - RESIDENCY CLASSIFICATION - WHETHER THE DEFINITION OF "DAYS" IN A REGULATION OF THE COMMISSIONER OF TAXATION AND FINANCE (20 NYCRR 105.20[c]) IS INCONSISTENT WITH TAX LAW § 605(b)(1)(B), WHICH PROVIDES THAT A NONDOMICILIARY MAY BE CONSIDERED A NEW YORK RESIDENT FOR INCOME TAX PURPOSES IF HE OR SHE MAINTAINS A PERMANENT PLACE OF ABODE IN THIS STATE AND SPENDS IN EXCESS OF 183 DAYS OF THE YEAR HERE; CLAIMED CONSTITUTIONAL VIOLATION;

App. Div. confirmed a determination of respondent Tax Appeals Tribunal sustaining a personal income tax assessment imposed under Tax Law article 22, and dismissed petitioners' CPLR article 78 petition.