

COURT OF APPEALS NEW FILINGS

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

December 18, 2015 through December 24, 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.

PEOPLE EX REL. MOORE v SUPERINTENDENT OF COXSACKIE CORRECTIONAL FACILITY:

3RD Dept. App. Div. order of 12/4/15; denial of application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; HABEAS CORPUS - AVAILABILITY OF RELIEF - CPLR 7002(b); App. Div., among other things, denied petitioner's application for a writ of habeas corpus.

MURRAY v BANCO POPULAR, et al.:

2ND Dept. App. Div. order of 10/14/15; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether there is any other basis for an appeal as of right; NEGLIGENCE - MAINTENANCE OF PREMISES - PLAINTIFF SLIPPED AND FELL ON WET PORTION OF VESTIBULE FLOOR ON RAINY DAY - WHETHER DEFENDANTS CREATED THE ALLEGED HAZARDOUS CONDITION, OR HAD ACTUAL OR CONSTRUCTIVE NOTICE OF IT; SUMMARY JUDGMENT; Supreme Court, Kings County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed and granted defendants' motion for summary judgment dismissing the complaint.

MATTER OF NERONI, AN ATTORNEY:

4TH Dept. App. Div. order of 11/13/15; suspension of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO ORDER SUSPENDING ATTORNEY FROM PRACTICE OF LAW FOR TWO YEARS; App. Div., among other things, found attorney guilty of professional misconduct and suspended her from the practice of law for a period of two years and until further order of that court.

O'BRIEN v THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, et al.:

1ST Dept. App. Div. order of 9/8/15; modification; leave to appeal granted by App. Div., 12/10/15; LABOR - SAFE PLACE TO WORK - ELEVATION-RELATED RISK - FALL DOWN WET TEMPORARY OUTDOOR STAIRCASE - APPLICABILITY OF LABOR LAW § 240(1) TO TEMPORARY OUTDOOR STAIRCASE AT WORKSITE - WHETHER PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON LIABILITY ON HIS CLAIM UNDER LABOR LAW § 240(1); Supreme Court, New York County, denied plaintiff's motion and the cross motion of defendants Port Authority of New York and New Jersey, Tishman Construction Corporation of New York and Atlantic Housing and Scaffolding, LLC for summary judgment on plaintiff's Labor Law § 240(1) claim and granted plaintiff summary judgment on his Labor Law § 241(6) claim insofar as predicated on a violation of 12 NYCRR 23-1.7(d); App. Div. modified to grant plaintiff's motion for partial summary judgment as to liability on his Labor Law § 240(1) claim and to deny plaintiff summary judgment on his Labor Law § 241(6) claim as predicated on a violation of 12 NYCRR 23-1.7(d), and otherwise affirmed.

SCHULZ, et al. v CUOMO, et al.:

3RD Dept. App. Div. order of 11/5/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the action within the meaning of the Constitution;

DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT - JUSTICIABILITY - STANDING; DECLARATORY JUDGMENT - ACTION SEEKING DECLARATION THAT IT WOULD BE A CONFLICT OF INTEREST FOR DEFENDANTS TO SERVE AS DELEGATES TO A FUTURE NEW YORK STATE CONSTITUTIONAL CONVENTION; INJUNCTION - PROCEEDING TO PERMANENTLY ENJOIN DEFENDANTS FROM BECOMING DELEGATES AT SUCH A CONVENTION; NY CONSTITUTION, ARTICLE XIX, § 2;

Supreme Court, Albany County, granted certain defendants-respondents' motions to dismiss the complaint, and dismissed the complaint; App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v RICHARD TT.:

3RD Dept. App. Div. order of 8/13/15; reversal with a two-Justice dissent; leave to appeal granted by App. Div., 12/4/15; CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - SEX OFFENDER MANAGEMENT TREATMENT ACT (SOMTA) - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT SUPREME COURT ABUSED ITS DISCRETION IN GRANTING RESPONDENT'S MOTION TO VACATE ORDERS DETERMINING THAT RESPONDENT HAS A MENTAL ABNORMALITY AND WAS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT - SUFFICIENCY OF THE EVIDENCE OF MENTAL ABNORMALITY UNDER MATTER OF STATE OF NEW YORK v DONALD DD. (24 NY3d 174 [2014]);

Supreme Court, Warren County, in a proceeding pursuant to Mental Hygiene Law article 10, granted respondent's motion to, among other things, vacate two prior orders of the court; App. Div. reversed, denied respondent's motion to vacate two prior Supreme Court orders, one finding him to be a detained sex offender suffering from a mental abnormality, and the other adjudicating him a dangerous sex offender requiring confinement.

ZITO v NEW YORK CITY OFFICE OF PAYROLL ADMINISTRATION, et al.:

3RD App. Div. order of 7/23/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; DISMISSAL AND NONSUIT - DISMISSAL OF COMPLAINT - ACTION BY FORMER SUBSTITUTE TEACHER EMPLOYED BY DEFENDANT NEW YORK CITY DEPARTMENT OF EDUCATION WHO WAS UNABLE TO OBTAIN A REFUND OF FICA TAXES ERRONEOUSLY PAID IN PRIOR YEARS - CLAIMED NEGLIGENCE, FRAUD, BREACH OF FIDUCIARY AND OTHER DUTIES; CLAIMED DUE PROCESS VIOLATIONS;

Supreme Court, Delaware County, among other things, granted defendants' motions to dismiss the complaint; App. Div. affirmed.