

COURT OF APPEALS NEW FILINGS

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

April 8, 2016 through April 14, 2016

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.

MADEIROS, MATTER OF v NEW YORK STATE EDUCATION DEPARTMENT et al.:
3RD Dept. App. Div. order of 11/5/15; affirmance; leave to appeal granted by Court of Appeals, 4/5/16;
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78
PROCEEDING TO REVIEW RESPONDENT NEW YORK STATE EDUCATION DEPARTMENT'S DENIAL OF PETITIONER'S REQUEST FOR DOCUMENTS UNDER THE FREEDOM OF INFORMATION LAW (FOIL) - FOIL REQUEST FOR DOCUMENTS RELATED TO FISCAL AUDITS OF PRESCHOOL SPECIAL EDUCATION PROGRAMS AUTHORIZED BY EDUCATION LAW § 4410 - WHETHER THE APPELLATE DIVISION ERRONEOUSLY CONCLUDED THAT THE LAW ENFORCEMENT EXCEPTION TO FOIL PERMITS RESPONDENT TO WITHHOLD THE DOCUMENTS AT ISSUE - PUBLIC OFFICERS LAW § 87(2)(e) AND (g); ATTORNEYS' FEES RECOVERABLE UNDER FOIL;

Supreme Court, Albany County, partially dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review respondent's determination denying petitioner's Freedom of Information Law request; App. Div. affirmed.

NONNI (MARK), PEOPLE v:

1ST Dept. App. Div. order of 11/5/15; affirmance with a two-Justice dissent; Rule 500.11 review pending;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER POLICE HAD A FOUNDED SUSPICION OF CRIMINALITY JUSTIFYING A LEVEL TWO INQUIRY UNDER PEOPLE v DE BOUR (40 NY2d 210) - WHETHER THE LEVEL OF SUSPICION WAS ELEVATED TO REASONABLE SUSPICION WHEN DEFENDANT FLED, JUSTIFYING PURSUIT AND AN INVESTIGATIVE DETENTION; WHETHER POLICE WERE JUSTIFIED IN CONDUCTING A PROTECTIVE SEARCH OF DEFENDANT'S BAG AND PERSON;

Supreme Court, Bronx County, convicted defendant of robbery in the second degree and sentenced him, as a persistent violent felony offender, to a term of 20 years to life; App. Div. affirmed.

60 EAST 12TH STREET TENANTS' ASSOCIATION, et al., MATTER OF v NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL (AND ANOTHER PROCEEDING):

1ST Dept. App. Div. order of 12/29/15; modification with a two-Justice dissent; leave to appeal granted by App. Div., 3/17/16; Rule 500.11 review pending;

LANDLORD AND TENANT - RENT REGULATION - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT AN "IRREGULARITY IN VITAL MATTERS" WARRANTED A REMAND TO THE DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR); ADMINISTRATIVE LAW - COLLATERAL ESTOPPEL - CHALLENGE TO DHCR DETERMINATIONS CONCERNING MAJOR CAPITAL IMPROVEMENT (MCI) RENT INCREASE APPLICATION - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT COLLATERAL ESTOPPEL DID NOT PRECLUDE DHCR FROM CONSIDERING, ON REMAND, THE OWNER'S APPLICATION FOR AN MCI RENT INCREASE BASED ON RESURFACING WORK;
Supreme Court, New York County, granted the CPLR article 78 petition of 60 East 12th Street Tenants' Association and Jeffrey Schanback, as its Resident and Tenant Representative (Tenants), to the extent of annulling so much of the 8/15/13 DHCR determination as effectively granted in part and denied in part the application of 12 Broadway Realty LLC (Owner) for a rent increase based on a claimed major capital improvement (MCI) involving resurfacing of exterior walls of the subject building, and remanded to DHCR with conditions precluding it from reconsidering that MCI issue; App. Div. modified to permit DHCR on remand to address Owner's application for an MCI rent increase based on resurfacing work consistent with its decision, and otherwise affirmed.

SUIT-KOTE CORPORATION, MATTER OF v RIVERA, &c.:

3RD Dept. App. Div. order of 3/3/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

LABOR - PREVAILING RATE OF WAGES - WHETHER RESPONDENT COMMISSIONER OF LABOR MUST DETERMINE IN THE FIRST INSTANCE THAT AT LEAST 30% OF WORKERS IN THE RELEVANT TRADE AND LOCALITY ARE SUBJECT TO THE COLLECTIVE BARGAINING AGREEMENTS USED TO ESTABLISH PREVAILING WAGES AND SUPPLEMENTAL BENEFITS - WHETHER THE METHOD RESPONDENT USED IN SETTING THE PREVAILING WAGES AND SUPPLEMENTAL BENEFITS AT ISSUE RENDERED RESPONDENT'S DETERMINATION ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION, OR AFFECTED BY AN ERROR OF LAW; DISCLOSURE - WHETHER SUPREME COURT ABUSED ITS DISCRETION IN DENYING EMPLOYER'S REQUEST FOR DISCLOSURE PURSUANT TO CPLR 408;

Supreme Court, Albany County, dismissed petitioner's CPLR article 78 petition to review determinations of respondent establishing prevailing wage rates; App. Div. affirmed.

WRIGHT (PHILLIP), PEOPLE v:

2ND Dept. App. Div. order of 12/23/15; affirmance; leave to appeal granted by Fahey, J., 4/5/16;

CRIMES - SENTENCE - PERSISTENT VIOLENT FELONY OFFENDER - WHETHER THE ADJUDICATION OF DEFENDANT AS A PERSISTENT FELONY OFFENDER WAS BASED ON NON-JURY FINDINGS IN VIOLATION OF THE RULE SET FORTH IN APPRENDI v NEW JERSEY (530 US 466) AND ITS PROGENY; JURORS - WHETHER SUPREME COURT ERRED IN DENYING DEFENDANT'S CHALLENGES FOR CAUSE TO THREE PROSPECTIVE JURORS - FAILURE TO OBTAIN UNEQUIVOCAL ASSURANCES FROM JURORS REGARDING IMPARTIALITY;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

JOHN Z., MATTER OF (COMMISSIONER OF MENTAL HEALTH; JOHN Z.):

3RD Dept. App. Div. order of 2/18/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

MENTAL HEALTH - PATIENT IN CUSTODY OF COMMISSIONER OF MENTAL HEALTH - WHETHER A DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER WITH NARCISSISTIC AND PARANOID FEATURES IS SUFFICIENT AS A MATTER OF LAW TO JUSTIFY CIVIL CONFINEMENT OF PRISONER AFTER EXPIRATION OF HIS PRISON SENTENCE PURSUANT TO CPL 330.20; CLAIMED DUE PROCESS VIOLATION;

Supreme Court, Washington County, in a proceeding pursuant to CPL 330.20(14), found that respondent has a dangerous mental disorder and recommitted him to the custody of petitioner for a period of six months; App. Div. affirmed.