

COURT OF APPEALS NEW FILINGS

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

June 10, 2016 through June 16, 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.

ANDINO v MILLS, et al.:

1ST Dept. App. Div. order of 1/5/16; modification; leave to appeal granted by App. Div., 5/31/16; sua sponte examination whether the Appellate Division had the power to grant leave to appeal from an order granting a new trial;

DAMAGES - COLLATERAL SOURCE OF PAYMENT - CPLR 4545 - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT, UNDER ODEN V CHEMUNG COUNTY INDUS. DEV. AGENCY (87 NY2d 81 [1995]), THE JURY'S AWARD FOR FUTURE LOSS OF PENSION BENEFITS SHOULD HAVE BEEN OFFSET BY THE TOTAL AMOUNT THAT PLAINTIFF WAS PROJECTED TO RECEIVE UNDER HER ACCIDENTAL DISABILITY PENSION;

Supreme Court, Bronx County, after a hearing, denied defendants' motion for a collateral source offset pursuant to CPLR 4545; thereafter, Supreme Court, upon a jury verdict, awarded plaintiff the principal sums of \$600,000 for past pain and suffering, \$23,000,000 for future pain and suffering over 37 years, \$283,422 for past lost earnings, \$2,392,512 for future lost earnings over 19.24 years, \$2,100,000 for future medical expenses over 37 years, and \$2,490,829 for future loss of pension over 17.7 years; App. Div. modified to grant that portion of defendants' motion seeking to offset the jury's award of future pension benefits by the amount of plaintiff's accidental disability benefits, and to vacate the award for future pain and suffering and order a new trial as to such damages, unless plaintiff, within 30 days of service of a copy of the order with notice of entry, stipulated to accept a reduced award for future pain and suffering in the amount of \$2.7 million and to entry of an amended judgment in accordance therewith, and otherwise affirmed.

BRYANT (JEFFREY), PEOPLE v:

1ST Dept. App. Div. order of 3/1/16; modification; leave to appeal granted by Tom, J., 5/24/16; Rule 500.11 review pending; CRIMES - APPEAL - WAIVER - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL WAS INVALID BECAUSE THE RECORD DID NOT SHOW THAT IT WAS MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY; Supreme Court, New York County, convicted defendant, upon his guilty plea, of four counts of grand larceny in the fourth degree, and sentenced him to four consecutive terms of one to three years; App. Div. modified to the extent of directing that the sentence for the conviction under count three of the indictment be served concurrently with the other sentences, and otherwise affirmed.

APONTE, MATTER OF v OLATOYE, &c., et al.:

1ST Dept. App. Div. order of 4/7/16; reversal with dissents; sua sponte examination whether the order finally determines the proceeding within the meaning of the Constitution; PUBLIC HOUSING - DENIAL OF REMAINING FAMILY MEMBER STATUS - WHETHER DETERMINATION DENYING PETITIONER SUCCESSION RIGHTS TO HIS MOTHER'S APARTMENT WAS ARBITRARY AND CAPRICIOUS WHERE AGENCY DID NOT CONSIDER MOTHER'S DISABILITY IN REACHING ITS DETERMINATION; Supreme Court, New York County, denied the CPLR article 78 petition seeking to annul a determination of respondent New York City Housing Authority (NYCHA), which dismissed petitioner's remaining family member (RFM) grievance on the ground that he did not qualify as an RFM, and dismissed the CPLR article 78 proceeding.

DEGRAFFENREID (BRIAN), PEOPLE v:

1ST Dept. App. Div. order of 4/7/16; affirmance; leave to appeal granted by Tom, J., 5/31/16; Rule 500.11 review;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT DEFENSE COUNSEL'S FAILURE TO REVIEW IN SLOW MOTION A VIDEO RECORDING THAT WAS MADE 11 MINUTES BEFORE THE ATTACK WAS NOT SO EGREGIOUS AND PREJUDICIAL AS TO COMPROMISE DEFENDANT'S RIGHT TO A FAIR TRIAL; JURY INSTRUCTIONS - WHETHER COURT'S CHARGE ON CAUSATION OF DEATH WAS PROPER;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree, and sentenced him to a term of 18 years; App. Div. affirmed.

GOOTEE v GLOBAL CREDIT SERVICES, LLC:

1ST Dept. App. Div. order of 5/19/16; modification with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

CONTRACTS - EMPLOYMENT CONTRACTS - TERMINATION OF COMPANY PRESIDENT - EFFECT OF NO ORAL MODIFICATION CLAUSE IN WRITTEN EMPLOYMENT AGREEMENT; SUMMARY JUDGMENT; COUNTERCLAIM FOR REPAYMENT OF CERTAIN FORGIVABLE LOANS;

Supreme Court, New York County, granted plaintiff's motion for summary judgment with respect to liability for breach of contract and dismissing defendant's counterclaim, referred the issue of damages to a special referee or judicial hearing officer to hear and report, and denied defendant's motion for summary judgment on its counterclaim; App. Div. modified to deny plaintiff's motion for summary judgment, and otherwise affirmed.

MYERS, et al. v SCHNEIDERMAN, &c., et al.:

1ST Dept. App. Div. order of 5/3/16; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER PENAL LAW §§ 120.30 AND 125.15, WHICH PROHIBIT PHYSICIAN-ASSISTED SUICIDE, VIOLATE THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE STATE CONSTITUTION AND WHETHER SUCH STATUTES PROHIBIT A LICENSED PHYSICIAN FROM ENGAGING IN THE PRACTICE KNOWN AS "AID IN DYING" TO TERMINALLY ILL, MENTALLY COMPETENT ADULT PATIENTS;

Supreme Court, New York County, granted defendant Attorney General's pre-answer motion to dismiss the complaint; App. Div. modified to declare that (a) Penal Law §§ 120.30 and 125.15 provide a valid statutory basis to prosecute licensed physicians who provide aid-in-dying, and (b) that to the extent that Penal Law §§ 120.20 and 125.15 prohibit a licensed physician from providing aid-in-dying, the application of that statute to such conduct does not violate the New York State Constitution, and as so modified, affirmed.

CITY OF SCHENECTADY, MATTER OF v NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD (PERB):

3RD Dept. App. Div. order of 2/4/16; affirmance; leave to appeal granted by Court of Appeals, 6/7/16;

CIVIL SERVICE - PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT - COLLECTIVE BARGAINING - DISCIPLINE OF POLICE - WHETHER THE TAYLOR LAW, AS CODIFIED IN CIVIL SERVICE LAW ARTICLE 14, SUPERCEDED ARTICLE 9 OF THE SECOND CLASS CITIES LAW, MAKING THE MUNICIPALITY'S POLICE DISCIPLINARY PROCEDURES A MANDATORY SUBJECT OF COLLECTIVE BARGAINING - MATTER OF PATROLMEN'S BENEVOLENT ASSN. OF CITY OF N.Y., INC. v NEW YORK STATE PUB. EMPL. RELATIONS BD. (6 NY3d 563 [2006]) AND MATTER OF TOWN OF WALLKILL v CIVIL SERV. EMPLS. ASSN., INC. (LOCAL 1000, AFSCME, AFL-CIO, TOWN OF WALLKILL POLICE DEPT. UNIT, ORANGE COUNTY LOCAL 836) (19 NY3d 1066 [2012]);

Supreme Court, Albany County, among other things, dismissed petitioner's CPLR article 78 application to review a determination of respondent PERB finding that petitioner's police disciplinary procedures were a mandatory subject of collective bargaining; App. Div. affirmed.

STEWART (ALFRED), PEOPLE v:

1ST Dept. App. Div. order of 12/29/15; affirmance; leave to appeal granted by DiFiore, Ch.J., 6/3/16; Rule 500.11 review pending;

CRIMES - RIGHT TO BE PRESENT AT TRIAL - WHETHER DEFENDANT HAD THE RIGHT TO BE PRESENT AT RESENTENCING WHERE HE WAS RESENTENCED TO CORRECT AN ORIGINALLY ILLEGAL SENTENCE - COUNSEL WAIVED DEFENDANT'S APPEARANCE IN HIS ABSENCE; INVALID WAIVER;

Supreme Court, Bronx County, convicted defendant, upon his pleas of guilty, of two counts of auto stripping in the second degree, and sentenced him to concurrent terms of 1 1/3 to 4 years; App. Div. affirmed.