

COURT OF APPEALS NEW FILINGS

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

December 23, 2016 through December 29, 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.

EPAKCHI (DARIA N.), PEOPLE v:
App. Term, 9TH and 10TH Judicial Districts order of 6/23/16;
reversal; leave to appeal granted by DiFiore, Ch.J., 11/30/16;
CRIMES - ACCUSATORY INSTRUMENT - WHETHER A SIMPLIFIED TRAFFIC
INFORMATION MAY BE RE-FILED AFTER ANOTHER SIMPLIFIED TRAFFIC
INFORMATION ALLEGING THE SAME OFFENSE WAS DISMISSED FOR FAILURE
TO TIMELY PROVIDE A SUPPORTING DEPOSITION - NECESSITY OF SHOWING
SPECIAL CIRCUMSTANCES WARRANTING REPROSECUTION;

District Court, Suffolk County, Traffic and Parking Violations Agency, denied defendant's motion to dismiss the uniform traffic ticket, and directed the parties to proceed to trial; the same court then convicted defendant after a nonjury trial, of failing to stop at a stop sign; App. Term reversed, vacated the District Court judgment, granted defendant's motion to dismiss the simplified traffic information, and remitted the fine, if paid.

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

1ST Dept. App. Div. order of 9/1/16; reversal; leave to appeal granted by App. Div., 12/8/16;

INSURANCE - ACTION AGAINST INSURER - COVERAGE - LONG-TERM ENVIRONMENTAL PROPERTY DAMAGE CAUSED BY POLLUTION FROM MANUFACTURED GAS PLANTS - ALLOCATION OF RISK OF LOSS ATTRIBUTABLE TO A CONTINUOUS HARM OCCURRING, IN PART, DURING PERIODS WHEN LIABILITY INSURANCE WAS UNAVAILABLE IN THE MARKETPLACE - WHETHER THE POLICIES AT ISSUE CONTAIN ANTI-STACKING LANGUAGE REQUIRING AN ALL-SUMS ALLOCATION METHOD;

Supreme Court, New York County, among other things, denied defendant Century Indemnity Company's motion for partial summary judgment declaring that it is not responsible for any part of the costs of cleanup for periods of time where insurance was unavailable before 1953 and after 1986; App. Div. reversed, granted defendant's motion for partial summary judgment, and declared that defendant Century Indemnity Company is not responsible for any part of the costs of cleanup for periods of time where insurance was unavailable before 1953 and after 1986.

KOLCHINS v EVOLUTION MARKETS, INC.:

1ST Dept. App. Div. order of 4/2/15; modification; leave to appeal granted by App. Div., 10/15/15; motion to dismiss appeal pending;

CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - WHETHER THE PARTIES' EMAILS AND OTHER CORRESPONDENCE CONSTITUTED A BINDING OFFER AND ACCEPTANCE OF AN EXTENSION OF A 2009 EMPLOYMENT AGREEMENT - WHETHER RESPONDENT IS ENTITLED TO A "PRODUCTION BONUS" DEPENDENT ON ACTIVE EMPLOYMENT AT THE TIME OF PAYMENT; Supreme Court, New York County, insofar as appealed from, denied defendant's motion to dismiss the first cause of action for breach of contract; App. Div. modified to dismiss so much of the first cause of action as seeks to recover a Special Non-Compete Payment under plaintiff's 2009 Employment Agreement, and otherwise affirmed.

ORTIZ, MATTER v ANNUCCI, &c.:

3RD Dept. App. Div. order of 10/27/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - CALCULATION OF SENTENCE - JAIL TIME CREDIT - WHETHER PRISONER WAS ENTITLED TO JAIL TIME CREDIT ON SENTENCE IMPOSED FOR ATTEMPTED MURDER CONVICTION FOR THE TIME PRISONER SPENT IN CUSTODY ON PRIOR ATTEMPTED ROBBERY CONVICTION - DOUBLE JEOPARDY - WHETHER REMOVAL OF JAIL TIME CREDIT FOR TIME THAT PRISONER SERVED ON PRIOR ATTEMPTED ROBBERY SENTENCE CONSTITUTED MULTIPLE PUNISHMENTS FOR PRISONER'S ATTEMPTED MURDER CONVICTION;

Supreme Court, Albany County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to compel the Department of Corrections and Community Supervision to credit petitioner for jail time served on a previously imposed sentence; App. Div. affirmed.

RODRIGUEZ v CITY OF NEW YORK:

1ST Dept. App. Div. order of 9/1/16; affirmance; leave to appeal granted by App. Div., 12/15/16;

NEGLIGENCE - COMPARATIVE NEGLIGENCE - WHETHER PLAINTIFF WAS REQUIRED TO ESTABLISH THE ABSENCE OF COMPARATIVE NEGLIGENCE IN ORDER TO OBTAIN SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY; Supreme Court, New York County, insofar as appealed from, denied defendant's motion to strike the claim for lost earnings or, in the alternative, to compel plaintiff to provide copies of his tax returns and/or authorizations for such returns; App. Div. affirmed.

RICHARDO T. (ANONYMOUS), JR., MATTER OF (ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES; RICARDO T. [ANONYMOUS], SR.):

2ND Dept. App. Div. order of 3/9/16; denial of motion; sua sponte examination whether the order finally determines the proceeding within the meaning of the Constitution;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION TO VACATE DISMISSAL ORDER;

App. Div. denied appellant's motion, in effect, to vacate a 7/30/15 Appellate Division order dismissing an appeal from a 3/6/14 Family Court, Orange County order as untimely taken, and for leave to file a late notice of appeal.

TIRONE et al., &c. v BUCZEK:

4TH Dept. App. Div. order of 9/30/16; affirmance; sua sponte examination whether the order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

MORTGAGES - FORECLOSURE - CHALLENGE TO STANDING OF PLAINTIFF TRUSTEES TO BRING FORECLOSURE ACTION - LOST NOTE;

Supreme Court, Erie County, among other things, granted plaintiffs a judgment of foreclosure and sale; App. Div. affirmed.

VASQUEZ, &c. v NATIONAL SECURITIES CORPORATION et al.:

1ST Dept. App. Div. order of 5/12/16; affirmance; leave to appeal granted by App. Div., 12/13/16;

ACTIONS - CLASS ACTIONS - WHETHER THE NOTICE PROVISION OF CPLR 908 APPLIES TO AN ACTION PLEADED AS A CLASS ACTION BUT DISMISSED PRIOR TO CLASS CERTIFICATION - NOTICE TO PUTATIVE CLASS OF IMPENDING DISMISSAL;

Supreme Court, New York County, granted plaintiff's motion to give notice of the impending dismissal of the complaint to putative class members pursuant to CPLR 908; App. Div. affirmed.