

COURT OF APPEALS NEW FILINGS

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

December 1, 2017 through December 7, 2017

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.

BROOKS, et al. v APRIL, et al.:

1ST Dept. App. Div. order of 10/24/17; reversal with dissents;
Rule 500.11 review pending;

Physicians and Surgeons--Malpractice--Whether, upon submission of affirmations of experts on defendants' motion for summary judgment, defendants established their entitlement to judgment as a matter of law and plaintiffs failed to raise a triable issue of fact as to defendant physician's alleged negligence in diagnosing plaintiff's brain trauma;

Supreme Court, New York County, among other things, denied defendants' motion for summary judgment dismissing the complaint in its entirety; App. Div. reversed and granted defendants' motion for summary judgment.

MATTER OF CZEIZINGER (CHAMBLISS-PARTEE; BALDWIN, JR.):

4TH Dept. App. Div. order of 11/9/17; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Accounting--Objections to accounting denied; claimed lack of personal and subject matter jurisdiction; alleged denial of objector's right to present proof;

Surrogate's Court, Onondaga County, among other things, denied the objections to an amended accounting by Donald K. Czeizinger, as Administrator of the Estate of Frederick D. Czeizinger; App. Div. affirmed.

DIXON v CUOMO, et al.:

Supreme Court, Cayuga County, order of 11/6/17; partial grant of motion to dismiss, sua sponte examination whether the order finally determines the action within the meaning of the Constitution and whether a direct appeal lies from a Supreme Court order pursuant to CPLR 5601(b)(2);

Proceeding Against Body or Officer--Certiorari--Various claims and causes of action asserted by prisoner--dismissal of all but one cause of action; claimed due process violations;

Supreme Court, Cayuga County, among other things, granted respondents' motion to dismiss petitioner's complaint with respect to all claims and causes of action except petitioner's CPLR article 78 application for review of respondent Superintendent's 5/2/17 hearing determination and 6/9/17 affirmation; and directed respondent to file and serve answering papers on or before 12/1/17.

MERY, et al. v EGINGER, et al.:

2ND Dept. App. Div. order of 4/12/17; affirmance; leave to appeal granted by App. Div., 11/22/17; Rule 500.11 review pending;

Negligence--Liability for Acts of Independent Contractor--Plaintiff struck in the eye by piece of wire ejected from lawn mower; whether property owner was vicariously liable for negligence on part of independent contractor who was mowing property owner's lawn; whether lawn mowing is an inherently dangerous activity;

Supreme Court, Dutchess County, granted the motion of defendant Society of Friends Church &c. for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

SPENCE, &c., et al., MATTER OF v NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, et al.:

3RD Dept. App. Div. order of 10/26/17; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Constitutional Law--First Amendment Rights--Rights of public employees to campaign for and hold elected office--employee policies with respect to outside activities; proceeding against body or officer--CPLR article 78 proceeding and action for declaratory judgment challenging disapproval of dairy product specialists' requests to campaign for and serve as county legislators; summary judgment; Supreme Court, Albany County, in a combined CPLR article 78 proceeding and action for declaratory judgment, among other things, granted respondents' motion for summary judgment dismissing the petition and complaint; App. Div. modified by declaring that the outside activities policy of respondent Department of Agriculture and Markets has not been shown to be unconstitutional, and as so modified, affirmed.