

COURT OF APPEALS NEW FILINGS

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

November 9, 2018 through November 15, 2018

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.

BALLARD, MATTER OF v KICKBUSH &c.:

4TH Dept. App. Div. order of 10/5/18; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--Whether substantial evidence supports the determinations that petitioner violated inmate rules; whether the hearing officer properly denied petitioner's request to call a witness; alleged due process violation;

App. Div. confirmed respondent's determinations which found that petitioner had violated various inmate rules, and dismissed the CPLR article 78 petition.

BRIGGS v STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION et al.:

3RD Dept. App. Div. order of 7/19/18; affirmance; sua sponte examination of whether any basis exists for an appeal as of right;

Limitation of Actions--One-Year Statute of Limitations--Whether causes of action for false arrest and unlawful imprisonment were untimely; torts--malicious prosecution—whether claim for malicious prosecution was properly dismissed for failure to state a cause of action;

Court of Claims granted defendants' motion to dismiss the claim; App. Div. affirmed.

JP MORGAN CHASE BANK, NA v LEVIN:

2ND Dept. App. Div. order of 5/16/18; affirmance; sua sponte examination of 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;

Mortgages--Foreclosure--Whether respondent Wells Fargo demonstrated its prima facie entitlement to judgment as a matter of law on its claim by establishing that its mortgage was valid and superior in priority to plaintiff JP Morgan Chase Bank's mortgage; whether plaintiff could challenge respondent Wells Fargo's standing;

Supreme Court, Nassau County, upon an order of the same court dated 3/12/15, as amended 4/21/15, granting the cross motion of defendant Wells Fargo Bank, NA, for summary judgment on its combined fourth affirmative defense, first counterclaim, and first cross claim, declared that defendant Wells Fargo Bank, NA, as holder of a mortgage dated 8/14/06, in the principal amount of \$380,000, had a valid and subsisting first priority mortgage lien against the subject property; App. Div. affirmed.