

COURT OF APPEALS NEW FILINGS

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

April 19 through April 25, 2019

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.

COLON v MARTIN:

2ND Dept. App. Div. order of 3/27/19; affirmance;

Municipal Corporations--Examination of Claims--Whether Supreme Court properly dismissed plaintiffs' complaint for failure to comply with General Municipal Law § 50-h; plaintiffs demanded that each plaintiff be permitted to be present while other testified at § 50-h hearing and municipal defendants refused, resulting in § 50-h hearing not being conducted; whether General Municipal Law § 50-h permits municipal defendants to exclude one claimant from the examination of another claimant;

Supreme Court, Richmond County, granted defendants' cross motion for summary judgment dismissing the complaint for failure to comply with General Municipal Law § 50-h; App. Div. affirmed.

DEEM, MATTER OF v COLANGELO:

3RD Dept. App. Div. order of 4/5/19; denial of motion; 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;

Proceeding Against Body or Officer--Order granting motion to dismiss CPLR article 78 proceeding and denying for a stay of trial pending in Supreme Court; alleged constitutional violations;

App. Div. granted the motion to dismiss the proceeding and denied the motion for a stay of trial.

DIXON, PEOPLE ex rel. v COVENY:

3RD Dept. App. Div. order of 4/1/19; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Habeas Corpus--Denial of Writ of Habeas Corpus--alleged constitutional violations;

App. Div., among other things, denied the application pursuant to CPLR 7002(b) for a writ of habeas corpus.

MSK REALTY INTERESTS, LLC, MATTER OF v DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK:

1ST Dept. App. Div. order of 3/7/19; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Taxation--Real Property Tax--Whether respondent Department of Finance of the City of New York properly determined that the term "primary residence" in RPTL 467-a refers to the dwelling place of individuals and does not apply to corporations, LLC partnerships, or other entities; Constitutional Law--Due Process of Law--whether restoration of petitioner's erroneously abated taxes violated its due process rights;

Supreme Court, New York County, denied the petition to annul Rules of Department of Finance of City of New York (19 RCNY) § 50-02 (effective January 26, 2014), which retroactively eliminated eligibility for a tax abatement for corporate and other non-individual owners of condominiums and cooperative apartments, and to prohibit respondent from seeking restoration from petitioner of erroneous abatements for four years, and dismissed the proceeding brought pursuant to CPLR article 78; App. Div. affirmed.

PAGE (LIMMIA), PEOPLE v:

4TH Dept. App. Div. order of 11/9/18; affirmance; leave to appeal granted by Wilson, J., 4/3/19;

Crimes--Unlawful Search and Seizure--Whether marine interdiction agent with the U.S. Customs and Border Protection Air and Marine Operations effected a valid citizen's arrest of defendant (CPL 140.30); whether evidence seized as a result of an invalid citizen's arrest is subject to suppression;

Supreme Court, Erie County, granted that part of defendant's omnibus motion seeking to suppress the evidence seized as the result of a traffic stop; App. Div. affirmed and dismissed the indictment.

WHITE, MATTER OF v ANNUCCI (APPELLATE DIVISION NO. 527619):

3RD Dept. App. Div. order of 3/14/19; 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--CPLR article 78 proceeding challenging determination finding prisoner guilty of violating a prison disciplinary rule; inmate charged with altering a document;

Supreme Court, Sullivan County, transferred CPLR article 78 proceeding to the App. Div.; App. Div. confirmed the determination of the Superintendent of Clinton Correctional Facility finding petitioner guilty of violating a prison disciplinary rule, and dismissed the petition.