

COURT OF APPEALS NEW FILINGS

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

April 30, 2021 through May 6, 2021

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.

DELGADO, et al. v STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 3/18/21; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Constitutional Law--Validity of Statute--Whether Part HHH of Chapter 59 of the Laws of 2018 violates the New York State Constitution;

Supreme Court, Albany County, partially granted defendants' motion to dismiss the amended complaint; App. Div. modified, by declaring that the Laws of 2018, chapter 59, § 1, part HHH had not been shown to be unconstitutional.

HILGREEN v POLLARD EXCAVATING, INC., et al.:

3RD Dept. App. Div. order of 4/1/21; reversal with two-Justice dissenting; sua sponte examination of whether the order appealed from finally determines the third-party action within the meaning of the Constitution;

Pleading--Sufficiency of Pleading--Whether the second amended third-party complaint stated a cause of action for reformation based on mutual mistake;

Supreme Court, Albany County, denied a motion by third-party defendant Central Mutual Insurance Company to dismiss the second amended third-party complaint against it; App. Div. reversed, granted the motion by third-party defendant Central Mutual Insurance Company, and dismissed the second amended third-party complaint against third-party defendant Central Mutual Insurance Company.

NYCTL 1998-2 TRUST et al. v DR 226 HOLDINGS, LLC, et al.:

2ND Dept. App. Div. order of 3/17/21; affirmance; sua sponte examination the order appealed from 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;

Landlord and Tenant--Rent Regulation--Whether defendant sustained his burden of proving succession rights to the rent-stabilized apartment; alleged unconstitutional taking;

Supreme Court, Kings County, denied the motion of nonparty AdelphiF, LLC, pursuant to RPAPL 221 for a writ of assistance to put it into possession of a certain apartment unit and determined that defendant Warren Johnson had succession rights to the rent-stabilized apartment; App. Div. affirmed.