



*State of New York
Court of Appeals*

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*Lisa Le Cours
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

April 26, 2024 through May 2, 2024

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.

BEHLER v TAO:

1st Dept. App. Div. order of 3/14/24; affirmance;

Contracts—Breach or Performance of Contract—Whether oral exit opportunity agreement between plaintiff investor and defendant, controlling member of LLC, was superseded by amended LLC agreement entered into unilaterally by defendant; Promissory Estoppel—Whether plaintiff sufficiently pleaded cause of action for promissory estoppel;

Supreme Court, New York County, granted defendant's motion to dismiss the complaint; App. Div. affirmed.

MATTER OF RM v CM:

2nd Dept. App. Div. order of 3/20/24; reversal; sua sponte examination of 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;

Statutes—Validity of Statute—Whether CPLR article 63-A, relating to extreme risk protection orders prohibiting a person from purchasing, possessing, or attempting a purchase a firearm, rifle, or shotgun under certain circumstances, is unconstitutional;

Supreme Court, Orange County, in a proceeding for an extreme risk protection order pursuant to CPLR article 63-A, granted respondent's motion for a declaration that CPLR article 63-A is unconstitutional, declared that CPLR article 63-A is unconstitutional, and dismissed the petition; App. Div. reversed, denied respondent's motion, reinstated the petition, remitted to Supreme Court for further proceedings on the petition and entry of judgment, among other things, declaring that CPLR article 63-A is constitutional.

ROSBAUGH et al v TOWN OF LODI:

4th Dept. App. Div. order of 3/22/24; modification;

Arbitration—Whether the award of treble damages against the town under Real Property Actions and Proceedings Law section 861 violates public policy and law prohibiting exemplary damages against municipalities;

Supreme Court, Seneca County, in a proceeding under CPLR article 75 and action for money damages, confirmed an arbitrator's award and awarded petitioners-respondents-plaintiffs money damages against respondent-petitioner-defendant Town of Lodi; App. Div. with two Justices dissenting, modified judgment by striking from the second decretal paragraph the language "the date of the commencement of the within action, to wit: November 23, 2011 under index #45717, as computed by the Clerk in the amount of \$13,443.48 per year," and substituted therefor the language "the date of the arbitrator's award" and, as so modified, affirmed.

TUCKETT v STATE OF NEW YORK:

4th Dept. App. Div. order of 12/22/23; affirmance;

State—Unjust Conviction and Imprisonment Act—Whether the trial court improperly relied on documents and facts not in evidence in rendering its decision; whether, when evaluating the claim under the Unjust Conviction Act, the trial court erred in determining that the complainant's recantation was unconvincing; whether claimant is entitled to judgment in his favor;

Court of Claims, dismissed claim; App. Div., with two Justices dissenting, affirmed.