



State of New York
Court of Appeals

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COURT OF APPEALS NEW FILINGS

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

December 6, 2024 through December 12, 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.

MATTER OF BENTKOWSKI v CITY OF NY:

APL-2024-00164

1st Dept. App. Div. order of 5/21/24; affirmance; leave to appeal granted by the Court of Appeals, 11/26/24;

Estoppel—Promissory Estoppel—Whether promissory estoppel bars the City from adopting new healthcare plans and discontinuing others;

Supreme Court, New York County, in a hybrid proceeding-class action brought under CPLR article 78, granted petition-complaint to the extent of permanently enjoining the City respondents/defendants from eliminating petitioner/plaintiff retirees' existing health insurance, automatically enrolling them in a new Aetna Medicare Advantage Plan, enforcing a June 30, 2023 deadline for retirees to opt out of the new plan, and implementing any other aspect of the City's new retiree healthcare policy; App. Div.

affirmed.

U.S. BANK v LYNCH:

APL-2024-00171

3rd Dept. App. Div. order of 10/24/24; reversal; sua sponte examination of whether 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;

Mortgages—Foreclosure—Whether section 2 of the Foreclosure Abuse Prevention Act applies retroactively; whether the retroactive application of FAPA violates plaintiff's rights under the New York State and United States Constitutions; whether the action is time barred;

Supreme Court, Rensselaer County, granted plaintiff's motion to restore the case to the trial calendar; App. Div. reversed and denied motion.

PEOPLE v WIGGINS (JAYLIN):

APL-2024-00059

4th Dept. App. Div. order of 3/22/24; affirmance; leave to appeal granted by Ogden, J., 5/14/24;

Crimes—Verdict—Whether guilty verdict is against the weight of the evidence; Crimes—Jurors—Whether County Court erred in denying defendant's request to discharge juror as grossly unqualified; whether County Court abused its discretion in denying motion for mistrial based on the ground that the jury was tainted by racial bias; whether County Court's handling of jury note violated *People v O'Rama* (78 NY2d 270 [1991]);

County Court, Erie County, convicted defendant upon a jury verdict of murder in the second degree, assault in the first degree, and criminal possession of a weapon in the second degree; App. Div. with two Justices dissenting, affirmed.

PEOPLE v ZUBIDI (AMADO):

APL-2024-00160

1st Dept. App. Div. order of 10/3/24; affirmance; leave to appeal granted by Rodriguez III, J., 11/7/24;

Crimes—Unlawful Search and Seizure—Whether the police may presume, for purposes of establishing reasonable suspicion to justify a car stop, that the car's unidentified driver is the same driver who was involved in a criminal act weeks earlier;

Supreme Court, New York County, convicted defendant after a jury trial of criminal possession of a weapon in the second degree (four counts) and reckless endangerment in the first degree and sentenced him to an aggregate term of 9 ½ years; App. Div., with one Justice dissenting, affirmed.