



*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

**November 24, 2023 through November 30, 2023**

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 MARKS v NEW YORK CITY TRANSIT AUTHORITY:

2nd Dept. App. Div. order of 10/4/23; affirmance; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Proceeding against Body or Officer—Termination of employment with New York City Transit Authority;**

Supreme Court, Kings County denied the petition and, in effect, dismissed the CPLR article 78 proceeding; App. Div. affirmed.

RIVAS v SEWARD PARK:

1st Dept. App. Div. order of 8/24/23; reversal; leave to appeal granted by the Appellate Division 10/31/23;

**Labor—Safe Place to Work—Whether the cave-in of a below grade excavation**

**presented an elevation-related hazard within the meaning of Labor Law § 240(1);** Supreme Court, New York County, inter alia, denied plaintiff's motion for summary judgment on the issue of liability on his Labor Law § 240(1) claim and granted the cross-motion of defendants Seward Park Housing Corporation and Onsite Construction Enterprises, Inc., for summary judgment dismissing the Labor Law § 240(1) claim; App. Div. reversed, granted the motion and denied the cross motion.

UZAMERE v UZAMERE:

2nd Dept. App. Div. order of 9/8/23; dismissal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for the appeal;

**Appeal—Dismissal;**

Supreme Court, Kings County inter alia, dismissed the complaint; App. Div. dismissed the appeal as duplicative of an appeal previously taken.

WILTZ v NEW YORK UNIVERSITY:

1st Dept. App. Div. order of 6/13/23; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

**Judgments—Res Judicata—Whether Supreme Court properly dismissed the complaint on the grounds of res judicata;**

Supreme Court, Bronx County granted defendants' motions to dismiss the complaint, denied plaintiff's motion for leave to amend the complaint, and denied, sub silentio, plaintiff's motion for a default judgment against defendant Franklin Diaz; Supreme Court, Bronx County denied plaintiff's motion to compel defendants to respond to discovery demands; App. Div. affirmed the 9/23/21 and 11/4/21 orders.