

COURT OF APPEALS NEW FILINGS

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

**December 20, 2013 through December 26, 2013**

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.**

BECKER, MATTER OF v COMMISSIONER OF LABOR:

3<sup>RD</sup> Dept. App. Div. order of 10/4/13; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any jurisdictional basis exists to support an appeal as of right;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR RECONSIDERATION;

App. Div. denied motion for reconsideration.

CONASON et al. v MEGAN HOLDING, LLC et al.:

1<sup>ST</sup> Dept. App. Div. order of 9/24/13; affirmance; leave to appeal granted by App. Div., 12/12/13;  
LIMITATION OF ACTIONS - FOUR-YEAR STATUTE OF LIMITATIONS (CPLR 213-a) - RENT OVERCHARGE - WHETHER APPELLATE DIVISION ERRED IN RULING THAT THE STATUTE OF LIMITATIONS IS NOT A BAR WHERE SIGNIFICANT EVIDENCE OF FRAUD EXISTS ON THE RECORD; ESTOPPEL - COLLATERAL ESTOPPEL - WHETHER SUPREME COURT CORRECTLY DETERMINED THAT DEFENDANTS WERE COLLATERALLY ESTOPPED FROM ARGUING THAT FRAUD DID NOT EXIST; CORPORATIONS - DISREGARDING CORPORATE ENTITY - WHETHER SUPREME COURT ERRED IN PIERCING THE CORPORATE VEIL;  
Supreme Court, New York County, among other things, granted plaintiff's motion for summary judgment on liability and denied defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

CURTIS-SHANLEY v BANK OF AMERICA:

2<sup>ND</sup> Dept. App. Div. orders of 10/25/13 and 8/28/13; denial of motion for, among other things, leave to appeal to Court of Appeals (10/25/13 order) and affirmance (8/28/13 order); sua sponte examination whether the orders appealed from finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;  
BANKS AND BANKING - ACTION SEEKING DAMAGES FOR BANK'S REFUSAL TO APPROVE APPLICATION FOR LETTER OF CREDIT; SUMMARY JUDGMENT; ALLEGED DUE PROCESS VIOLATIONS IN APPELLATE PROCESS;  
Supreme Court, Westchester County, denied plaintiff's motion to compel defendant to execute a certificate of readiness for trial and, in a separate order, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed and thereafter denied plaintiff's motion for reargument or for leave to appeal to the Court of Appeals.

DUBARRY (DARIUS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/12/13; affirmance; leave to appeal granted by Lippman, Ch. J., 12/11/13;  
CRIMES - MURDER - DEPRAVED INDIFFERENCE MURDER - JUSTIFICATION DEFENSE - SUBMISSION OF INTENTIONAL MURDER AND DEPRAVED INDIFFERENCE MURDER COUNTS TO THE JURY IN THE CONJUNCTIVE, RATHER THAN IN THE ALTERNATIVE; WITNESSES - UNAVAILABILITY OF WITNESS - WHETHER THE PEOPLE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT DEFENDANT'S MISCONDUCT PROCURED WITNESS'S UNAVAILABILITY;  
Supreme Court, Kings County, convicted defendant, upon a jury verdict, of two counts of murder in the second degree, attempted murder in the second degree and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

GUILLORY, MATTER OF v FISCHER, &c.:

3<sup>RD</sup> Dept. App. Div. order of 10/31/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PRISONS AND PRISONERS - DISCIPLINE OF INMATE - SMUGGLING AND POSSESSION OF AN ARTICLE THE USE OR POSSESSION OF WHICH IS PROHIBITED - TOBACCO; Supreme Court, Chemung County, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules; App. Div. affirmed.

MORGAN, &c., (ROCHESTER; PACHECO) MATTER OF:

1<sup>ST</sup> Dept. App. Div. order of 11/26/13; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution; APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR POOR PERSON AND OTHER RELIEF; App. Div. denied appellant Veronica Pacheco's motion for, among other things, leave to prosecute the appeal as a poor person, leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and removal of the current guardian(s).

SHIPLEY et al. v CITY OF NEW YORK et al.:

2<sup>ND</sup> Dept. App. Div. order of 4/17/13; reversal; leave to appeal granted by Court of Appeals, 12/12/13; DEAD BODIES - RIGHT OF SEPULCHER - RELEASE OF DECEDENT'S BODY BY MEDICAL EXAMINER'S OFFICE WITHOUT NOTIFICATION TO NEXT OF KIN THAT DECEDENT'S BRAIN HAD BEEN REMOVED AND RETAINED FOR FURTHER EXAMINATION; Supreme Court, Richmond County, denied defendants' motion for summary judgment dismissing the complaint; App. Div. modified by granting that branch of defendants' motion which was for summary judgment dismissing so much of the first cause of action as was to recover damages for unauthorized withholding, mutilation, and display of their son's body parts at the Medical Examiner's Office; Supreme Court awarded \$1 million in damages to plaintiffs; App. Div. reversed and remitted for a new trial on damages, unless plaintiffs served and filed a stipulation consenting to reduce the amount of damages from \$1 million to \$600,000 and to entry of an amended judgment reflecting such stipulation, and, in the event that plaintiffs' so stipulate, affirmed the judgment as so reduced and amended; Supreme Court, in a second amended judgment, awarded plaintiffs damages of \$600,000.

STATE OF NEW YORK, MATTER OF v CHARADA T.:

1<sup>ST</sup> Dept. App. Div. order of 6/18/13; affirmance; leave to appeal granted by Court of Appeals, 12/10/13;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION -  
WHETHER SUPREME COURT ERRED IN ADMITTING TESTIMONY REGARDING AN  
UNCHARGED SEXUAL ASSAULT - EXPERT WITNESS TESTIMONY ABOUT AND  
RELIANCE UPON HEARSAY EVIDENCE;  
Supreme Court, New York County, upon a jury finding of mental  
abnormality, and upon a finding made after a dispositional  
hearing that respondent is a dangerous sex offender requiring  
confinement, committed him to a secure treatment facility; App.  
Div. affirmed.

STERNE, MATTER OF v COMMISSIONER OF LABOR:

3<sup>RD</sup> Dept. App. Div. order of 3/7/13; affirmance; sua sponte  
examination whether a substantial constitutional question is  
directly involved to support an appeal as of right;  
UNEMPLOYMENT INSURANCE - BENEFITS - RECOVERY OF OVERPAYMENTS -  
WILLFUL MISREPRESENTATIONS;  
App. Div. affirmed a decision of the Unemployment Insurance  
Appeal Board which, among other things, ruled that claimant made  
willful misrepresentations to obtain benefits.