

COURT OF APPEALS NEW FILINGS

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

March 22, 2013 through March 28, 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.

DALE, MATTER OF v BURNS:

4TH Dept. App. Div. order of 2/8/13; dismissal of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CPLR ARTICLE 78 PROCEEDING SEEKING DISMISSAL OF AN INDICTMENT ON DOUBLE JEOPARDY GROUNDS, TRANSFER OF THE PROCEEDING TO ANOTHER TRIBUNAL OR RECUSAL OF CERTAIN JUSTICES OF THE APPELLATE DIVISION, AND A STAY;

App. Div. dismissed a CPLR article 78 proceeding seeking, among other things, dismissal of the indictment in a criminal matter as to which petitioner had been convicted and sentenced and had filed a notice of appeal.

LANG, MATTER OF KELLY:

1ST Dept. App. Div. order of 12/20/12; affirmance; leave to appeal granted by App. Div., 3/5/13; Rule 500.11 review pending; CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT - TRIP AND FALL OVER COMPUTER WIRES - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PETITIONER FAILED TO DEMONSTRATE AS A MATTER OF LAW THAT HER INJURY WAS THE RESULT OF AN ACCIDENT, RATHER THAN A MISSTEP DURING THE ROUTINE PERFORMANCE OF HER JOB;

Supreme Court, New York County denied the petition to annul respondents' denial, by virtue of a tie vote of respondent Board of Trustees, of petitioner's application for accidental disability retirement benefits, and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

METROPOLITAN TRANSPORTATION AUTHORITY, MATTER OF; WASHED AGGREGATE RESOURCES, INC.:

2ND Dept. App. Div. order of 1/16/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; EMINENT DOMAIN - VALUATION - COMPARABLE SALES METHOD VERSUS INCOME-BASED ANALYSIS - SAND AND GRAVEL QUARRY - CONSEQUENTIAL DAMAGES BASED ON DIMINISHED ACCESS; VALUE OF MINERAL RESOURCES; Supreme Court, Dutchess County, among other things, awarded claimant the sum of \$65,000 in direct damages and \$435,000 in consequential damages; App. Div. affirmed.

NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS v MICROTECH CONTRACTING CORP.:

2ND Dept. App. Div. order of 9/26/12; affirmance; leave to appeal granted by App. Div., 3/13/13; WORKERS' COMPENSATION - EXCLUSIVENESS OF REMEDY; STATUTES - FEDERAL PREEMPTION - EFFECT OF IMMIGRATION REFORM AND CONTROL ACT (IRCA) ON WORKERS' COMPENSATION LAW - INJURED UNDOCUMENTED WORKERS - WHETHER AN EMPLOYER'S VIOLATION OF IRCA PRECLUDES IT FROM INVOKING THE WORKERS' COMPENSATION LAW'S EXCLUSIVITY PROVISION AS A DEFENSE TO A LANDOWNER'S CLAIMS FOR CONTRIBUTION AND INDEMNIFICATION ARISING FROM THE LANDOWNER'S LIABILITY TO THE EMPLOYER'S INJURED UNDOCUMENTED WORKERS; Supreme Court, Suffolk County, among other things, granted that branch of defendant's motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7); App. Div. affirmed.

STATE OF NEW YORK, MATTER OF v WILLIAM W.:

1ST Dept. App. Div. order of 2/21/13; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MENTAL HEALTH - PROCEEDING BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW ARTICLE 10 - CONFINEMENT OF SEX OFFENDER IN SECURE FACILITY AFTER SERVICE OF PRISON TIME - WHETHER APPELLATE DIVISION PROPERLY WEIGHED CONFLICTING EVIDENCE; CLAIMED DENIAL OF

Supreme Court, Bronx County, upon a jury verdict that respondent suffers from a mental abnormality, determined that respondent is a dangerous sex offender requiring confinement; App. Div. affirmed.