

COURT OF APPEALS NEW FILINGS

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

January 17, 2020 through January 23, 2020

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.

ESTATE DEVELOPMENT CO., LLC et al. v PERVU et al.:

Supreme Court, Otsego County order of 11/1/19 and 10/24/19; discharging receiver; sua sponte examination of whether appellants are parties aggrieved (CPLR 5511) and whether there is any basis for an appeal as of right;

Appeal;

Supreme Court, among other things, appointed referee and deemed in default all non-appearing and non-answering defendants.

SHAH v STATE OF NEW YORK:

2ND Dept. App. Div. order of 12/11/19; dismissal; sua sponte examination 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;

State--Court of Claims--Whether the Court of Claims providently exercised its discretion in denying that branch of claimant's motion which was for leave to file a late claim;

Court of Claims denied claimant's motion for leave to reargue defendant's motion to dismiss, which was granted in an order of that court (9/1/17), or alternatively, for leave to file a late claim pursuant to Court of Claims Act § 10(6); App. Div. dismissed the appeal from so much of the order as denied that branch of the claimant's motion which was for leave to reargue, affirmed the order insofar as reviewed, and awarded one bill of costs to defendant.

ZERVOS v TRUMP:

1ST Dept. App. Div. order of 3/14/19; affirmance; leave to appeal granted by App. Div., 1/7/20;

Constitutional Law--Supremacy Clause--Whether the Supremacy Clause (U.S. Constitution, article VI, cl 2) provides blanket immunity to the President of the United States from having to defend against a civil damages action brought in state court; plaintiff commenced defamation action alleging that when defendant was a presidential candidate, he wrongly smeared plaintiff by claiming that her allegations of sexual misconduct against him were lies;

Supreme Court, New York County, denied defendant's motion to dismiss the defamation complaint or in the alternative to stay the action, and denied his special motion to strike the complaint under California's anti-SLAPP statute; App. Div. affirmed.