



*State of New York  
Court of Appeals*

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11/17/23

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COURT OF APPEALS NEW FILINGS

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

**November 10, 2023 through November 16, 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.**

CHIEN v FISHMAN:

1st Dept. App. Div. order of 10/3/23; denial; sua sponte examination of whether the appeal is timely taken and whether any jurisdictional basis exists for an appeal as of right;

**Motions and Orders—Whether petitioner was denied due process and equal protection;**

App. Div. denied motion for leave to appeal to the Appellate Division from a 6/17/22 order of the Appellate Term, First Department; App. Div. denied motion for reargument and/or clarification of the Appellate Division's 11/15/22 order; App. Div. denied leave to appeal to the Court of Appeals from 11/15/22 and 6/29/23 Appellate Division orders, and denying respondent's cross-motion.

DAVIS v MARSHALL & STERLING:

3rd Dept. App. Div. order of 6/8/23; affirmance; leave to appeal granted by the Appellate

Division, 9/15/23; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether an appeal lies from a nonfinal Appellate Division order absent a certified question.

**Employment Relationships—Restrictive Covenant in Employment Contract—Whether restrictive covenants in plaintiffs’ employment agreements are enforceable as a matter of law;**

Supreme Court, Ulster County, denied plaintiffs’ and third-party defendant’s motion for, among other things, summary judgment dismissing the third-party complaint, and partially granted defendant’s cross-motion for, among other things, summary judgment on the issue of liability; App. Div. affirmed.

MANKO v MANNOR:

1st Dept. App. Div. order of 7/26/22; denial; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Motions and Orders;**

App. Div. denied motion to vacate and reconsider prior orders; App. Div. denied motion, among other things, to vacate and reconsider prior orders, and directed plaintiff not to file further motions without permission of the Clerk of the Court.