



*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

January 19, 2024 through January 25, 2024

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 160 E. 84TH v DHCR (Ind. Nos. 157563/20, 157573/20, 157580/20):
1st Dept. App. Div. order of 5/31/22; affirmance; leave to appeal granted by the Court of Appeals, 1/11/24;

Landlord and Tenant-Rent Regulation—Whether respondent New York State Division of Housing and Community Renewal (DHCR) had the authority to issue explanatory addenda to prior rent deregulation orders; whether the Housing Stability and Tenant Protection Act of 2019 (HSTPA)'s repeal of luxury deregulation provisions applies to luxury deregulation orders issued prior the enactment of the HSTPA, regardless of whether such application is denominated retroactive or not; whether a DHCR order deregulating an apartment, with implementation to occur at the end of the lease then in effect, may be nullified due to the lease expiring after an intervening change in law;
Supreme Court, New York County, denied the petitions to annul respondent New York

State Division of Housing and Community Renewal's (DHCR) September 6, 2019 "Explanatory Addenda" to rent deregulation orders dated October 19, 2018, April 5, 2019, and October 17, 2018, which explained the effects of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) (L 2019, ch 36, § 1) on those orders, to annul DHCR's orders, dated June 24, 2020, July 23, 2020, and July 23, 2020, which denied its petitions for administrative review challenging the addenda, and to reinstate the deregulation orders, and dismissed the proceedings brought pursuant to CPLR article 78; App. Div. affirmed.

JONES (WALTER), PEOPLE v:

1st Dept. App. Div. order of 5/25/23; modification; leave to appeal granted by the Court of Appeals, 1/11/24;

Crimes—Sex Offenders—Whether the Appellate Division abused its discretion in modifying defendant's SORA risk level three classification to a level two classification, but not a level one classification;

Supreme Court, Bronx County, denied defendant's Correction Law § 168-o (2) petition to modify his sex offender classification from level three to level one or two; App. Div. affirmed.

MERO (EDWARD), PEOPLE v:

3rd Dept. App. Div. order of 11/22/23; affirmance; leave to appeal granted by Reynolds Fitzgerald, J., 1/11/24;

Crimes—Consolidation and Severance—Whether the courts below abused their discretion in denying defendant's motion to sever the counts related to each victim; whether defendant was denied a fair trial by the courts' denial of his motion to sever; whether defendant was denied his right to counsel and his right to a fair trial when the courts below denied defendant's motion to vacate the judgment of conviction based on a conflict of interest founded on an undisclosed business relationship between defense counsel and one of the assistant district attorneys;

Supreme Court, Albany County, convicted defendant of murder in the second degree (two counts) and tampering with physical evidence (two counts) and thereafter denied defendant's motion under CPL 440.10 to vacate the judgment of conviction, after a hearing; App. Div., with two Justices dissenting in part, affirmed.

RUISECH v STRUCTURE TONE:

1st Dept. App. Div. order of 8/16/22; modification; leave to appeal granted by the Court of Appeals, 12/14/23;

Labor—Safe Place to Work—Whether the Appellate Division erred in modifying the trial court order and granting summary judgment in favor of defendants on plaintiffs' claims pursuant to Labor Law §§ 200 and 241 (6) and plaintiffs' common law negligence claims; whether the Appellate Division erred in determining that concrete debris was integral to the construction work within the meaning of Labor Law § 241 (6);

Supreme Court, New York County, among other things, denied the motions of defendants 200 Park, L.P. (Park) and Tishman Speyer Properties, L.P. (together, P&T), CBRE, Inc., and Structure Tone Inc., i/s/h/a Structure Tone Global Services, Inc. (ST) for summary judgment dismissing plaintiffs' Labor Law § 241 (6) claim, predicated on Industrial Code (12 NYCRR) § 23-1.7 (d) and (e) (2) as against Park, CBRE, and ST and the Labor Law § 200 and common-law negligence claims as against them, denied P&T's motion for summary judgment on Tishman's contractual indemnification claim against CBRE, their contractual indemnification claims against ST and third-party defendant A-Val Architectural Metal III, LLC, and their common-law indemnification claims against CBRE, ST, and A-Val, granted CBRE's motion for summary judgment on its contractual indemnification claim against ST conditionally and denied its motion for summary judgment on its contractual indemnification claim against A-Val and its common-law indemnification claim against ST and dismissing all common-law indemnification and contribution claims as against it, granted ST's motion for summary judgment on its contractual indemnification claim against A-Val conditionally and on the issue of liability on its breach of contract claim against A-Val for failure to procure insurance, and denied AVal's motion for summary judgment dismissing all claims for common-law indemnification and failure to procure insurance as against it; App. Div. modified to grant Park, CBRE, and ST summary judgment dismissing the Labor Law § 241 (6) claim as against them, to grant P&T, CBRE and ST summary judgment dismissing the Labor Law § 200 claim and common-law negligence claims against them, to grant Tishman's contractual indemnification claim against CBRE, grant CBRE summary judgment on its contractual indemnification claim against ST, to grant ST summary judgment on its contractual indemnification claim against A-Val and as to liability on its breach of contract claim against A-Val for failure to procure insurance, and to grant AVal summary judgment dismissing the common-law negligence claims as against it, and otherwise affirmed.

SHADER (TIMOTHY), PEOPLE v.:

3rd Dept. App. Div. order of 6/1/23; affirmance; leave to appeal granted by the Court of Appeals, 1/11/24;

Crimes—Sex Offenders—Whether the courts below abused their discretion or otherwise erred when they declined to grant a further modification to a level one classification;

Supreme Court, Albany County, reclassified defendant as a risk level two offender pursuant to the Sex Offender Registration Act; App. Div. affirmed.