



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 31, 2025 through February 6, 2025

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 ALMINDO:

APL-2025-00005

3rd Dept. App. Div. order of 12/14/23; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decisions of Unemployment Insurance Appeal Board, filed May 4,

2022, which ruled, among other things, that claimants were ineligible to receive unemployment insurance benefits because they were not totally unemployed.

MATTER OF BRUYERE:

APL-2025-00007

3rd Dept. App. Div. order of 2/8/24; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decisions of Unemployment Insurance Appeal Board, filed August 26, 2022, which ruled, among other things, that claimants were ineligible to receive unemployment insurance benefits because they were not totally unemployed.

MATTER OF DIXON-DOMINES:

APL-2025-00010

3rd Dept. App. Div. order of 3/21/24; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decisions of Unemployment Insurance Appeal Board, filed September 6, 2022, which ruled, among other things, that claimants were ineligible to receive unemployment insurance benefits because they were not totally unemployed.

MATTER OF DUNN:

APL-2025-00012

3rd Dept. App. Div. order of 3/21/24; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors

in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decisions of Unemployment Insurance Appeal Board, filed September 15, 2022, which ruled, among other things, that claimants were ineligible to receive unemployment insurance benefits because they were not totally unemployed.

MATTER OF NICOLE HUDSON:

APL-2025-00025

2nd Dept. App. Div. order of 9/25/24; affirmance; leave to appeal granted by Cannataro, J., 1/23/25;

Crimes—Plea of Guilty—Whether a defendant’s right to a Penal Law § 60.12 hearing under the Domestic Violence Survivors Justice Act is waivable as a condition of a plea agreement;

Supreme Court, Kings County, convicted defendant, upon a plea of guilty, of assault in the first degree; App. Div. affirmed.

MATTER OF KLOSTERMAN:

APL-2025-00006

3rd Dept. App. Div. order of 3/21/24; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decisions of Unemployment Insurance Appeal Board, filed September 13, 2022, which ruled, among other things, that claimants were ineligible to receive unemployment insurance benefits because they were not totally unemployed.

MATTER OF LAMPHIER:

APL-2025-00008

3rd Dept. App. Div. order of 3/21/24; affirmance; leave to appeal granted by the Court of Appeals, 1/9/25;

Unemployment Insurance—Benefits—Whether claimants were eligible to receive federal benefits under the CARES Act during the 2020 summer period because they

were “totally unemployed” under Labor Law § 522 or unable to work due to the Covid-19 pandemic; whether educational and vocational instructors and supervisors in corrections facilities who received a salary for 10-months work but worked prior summers teaching summer school may be deemed “totally unemployed” during summer 2020 because they were unable to work in the summer of 2020 due to the Covid-19 pandemic shutting down summer educational programs;

App. Div. affirmed decision of Unemployment Insurance Appeal Board, filed August 29, 2022, which ruled, among other things, that claimant was ineligible to receive unemployment insurance benefits he was not totally unemployed.

MATTER OF ORREGO v KNIPFING:

APL-2025-00031

3rd Dept. App. Div. order of 12/27/24; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any jurisdictional basis exists for the appeal taken as of right;

Motions and Orders;

App. Div. denied motion to vacate order and recommendation for criminal prosecution.

PEOPLE v NAIM ROPER:

APL-2025-00024

1st Dept. App. Div. order of 10/8/24; affirmance; leave to appeal granted by Cannataro, J., 1/23/25;

Crimes—Right to Speedy Trial—Whether the trial court erred in denying defendant’s CPL 30.30 motion as untimely and not on reasonable notice when counsel sought to file the motion the day after the prosecution had, for the first time, answered ready in court and before the case was sent out to a trial part; whether the trial court erred in refusing to grant a defense request for an adverse inference instruction regarding the Department of Corrections’s destruction of surveillance video of the incident when the video was material and the Department was the investigating agency;

Supreme Court, Bronx County, convicted defendant, after a bench trial, of attempted assault in the third degree, menacing in the third degree, and harassment in the second degree, and sentenced him to an aggregate jail term of 90 days; App. Div. affirmed.

MATTER OF SENECA MEADOWS v TOWN OF SENECA FALLS:

APL-2025-00023

4th Dept. App. Div. order of 12/20/24; reversal; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Parties—Standing—Whether petitioner-plaintiff has standing to challenge the Town’s passage of Local Law #3 under the State Environmental Quality Review Act (SEQRA) without alleging a specific environmental harm because petitioner-plaintiff’s property was directly targeted by the Local Law; whether the Town Board failed to comply with the requirements of SEQRA by failing to take a “hard look” at the environmental impacts of the Local Law;

Supreme Court, Seneca County, in a proceeding under CPLR article 78 and declaratory judgment action, granted the motion of petitioner-plaintiff for partial summary judgment on its first cause of action and declared Town of Seneca Falls Local Law No. 3 of 2016 invalid; App. Div., with two Justices dissenting, reversed, denied the motion, and vacated the declaration.

U.S. BANK v PACIFICO; JARINO:

APL-2025-00004

2nd Dept. App. Div. order of 10/30/24; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for the appeal taken as of right;

Motions and Orders;

Supreme Court, Suffolk County, among other things, denied defendant Joseph Pacifico’s motion to renew plaintiff’s motion for summary judgment and, upon renewal, dismissal of the complaint; App. Div. denied motion by defendant Dale Robert Javino to vacate the dismissal of the appeal and to extend the time to perfect the appeal.

WILLIAM METROSE LTD. v WASTE MANAGEMENT:

APL-2025-00016

4th Dept. App. Div. order of 3/15/24; reversal; leave to appeal granted by the Court of Appeals, 1/14/25;

Torts—Nuisance—Whether plaintiff stated causes of action for public nuisance, private nuisance, negligence, and gross negligence;

Supreme Court, Monroe County, denied the motion of defendant to dismiss the second amended complaint; App. Div., reversed, granted the motion to dismiss the second amended complaint, and dismissed the second amended complaint.