



*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

**April 4, 2025 through April 10, 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 DEWOLF v MCDONALD:

APL-2025-00067

3rd Dept. App. Div. order of 3/13/25; dismissal; 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 an appeal as of right;  
**Appeal—Dismissal—Whether the motion to dismiss the appeal was properly granted;**

App. Div. granted motion to dismiss appeal No. CV-25-0005.

PEOPLE v DONDORFER (PHILLIP):

APL-2025-00059

4th Dept. App. Div. order of 12/20/24; reversal; leave to appeal granted by Halligan, J., 3/24/25;

**Motor Vehicles—Operating Vehicle while Under Influence of Alcohol or Drugs—Whether the grand jury was properly instructed on what facts the People must prove to establish that a person was driving while "impaired" by drugs or a combination of drugs and alcohol (Vehicle and Traffic Law § 1192 [2-a] [b]; [4-a]);** County Court, Wyoming County granted defendant's renewed motion seeking to dismiss count 1 of the indictment; App. Div. reversed, denied renewed motion, reinstated count 1 of the indictment, and remitted to County Court for further proceedings.

FRACCOLA v 1st CHOICE REALTY:

APL-2025-00052

4th Dept. App. Div. order of 1/31/25; affirmance; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

**Dismissal and Nonsuit—Whether the complaint was properly dismissed;** Supreme Court, Oneida County, among other things, granted the motion of defendant Hon. Randal B. Caldwell to dismiss the complaint; App. Div. affirmed.

MATTER OF KOSACHUK v 9197-5904 QUEBEC, INC.:

APL-2025-00066

1st Dept. App. Div. order of 11/14/24; affirmance; 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 an appeal as of right;

**Judgments—Whether the petition to vacate a judgment by confession was properly dismissed; alleged constitutional violations;**

Supreme Court, New York County, (1) denied the petition and dismissed this proceeding pursuant to CPLR 5015 (a) (Dismissal Order); (2) denied petitioner's motion for a default judgment and dismissed the proceeding pursuant to CPLR 3215; and (3) granted respondents' motion to dismiss the petition pursuant to CPLR 3211, and for sanctions against petitioner pursuant to 22 NYCRR 130-1.1 (c) (case No. 2023-03869).

PEOPLE v MILLER HENDERSON (LASHAWN):

APL-2025-00062

4th Dept. App. Div. order of 1/31/25; affirmance; leave to appeal granted by Nowak, J., 3/18/25;

**Crimes—Proof of Prior Convictions—Whether the trial court erred in permitting the People to introduce evidence of defendant's prior conviction of attempted criminal possession of a controlled substance in the third degree; Crimes—Right to Counsel—Whether defendant was denied the effective assistance of counsel;**

Supreme Court, Monroe County, convicted defendant upon a jury verdict of criminal possession of a controlled substance in the third degree (two counts) and criminally using drug paraphernalia in the second degree (four counts); App. Div., with two Justices dissenting, affirmed.

SIMON v FRANCIINVEST:

APL-2025-00063

1st Dept. App. Div. order of 2/13/25; withdrawal; sua sponte examination of whether appellant is aggrieved by the order appealed from and whether an appeal lies pursuant to CPLR 5601(d) from that order;

**Appeal—Whether the Court has jurisdiction to entertain this appeal; alleged constitutional violations;**

Supreme Court, New York County, denied plaintiff's motion under CPLR 3025(b) and 5015(a)(3) to amend the third amended complaint to reinstate claims (except as to Jean-Francois Simon and Charles Raab, individually) and parties previously dismissed from the action and to add new claims against new parties based on new evidence; Supreme Court, New York County, declining to sign plaintiff's order to show cause to vacate the court's August 2023 order that mistakenly stated that an attorney had been granted pro hac vice admission; App. Div. denied (1) a motion for reargument and for leave to appeal, and (2) a separate motion to take judicial notice of, and supplement the record with, certain documents pertinent to the motion for reargument; App. Div. affirmed the April 8, 2022 Supreme Court order; App. Div. denied motion for reargument of or leave to appeal from April 23, 2024 Appellate Division order; App. Div. deemed withdrawn appeal from March 12, 2024 Supreme Court order.

SMITH v CITY OF NEW YORK:

APL-2025-00055

1st Dept. App. Div. order of 3/4/25; reversal;

**Release—Scope of Release—Whether the Appellate Division properly held that a general release executed in a another action barred plaintiff's claims in this action;**

Supreme Court, Bronx County, denied defendants City of New York and New York City Police Department's motion for summary judgment dismissing the complaint; App. Div. with two Justices dissenting, reversed and granted the motion for summary judgment dismissing the complaint.

MATTER OF WOODLEY v POOLE:

APL-2025-00054

1st Dept. App. Div. order of 4/9/24; modification; leave to appeal granted by the Court of Appeals, 3/18/25;

**Social Services—Register of Child Abuse and Maltreatment—Whether recent amendments to Social Services Law § 422 (8) (b) (ii) (B)—creating an irrebuttable presumption that an indicated report be unsubstantiated if a Family Court Act article 10 petition involving the same circumstances is withdrawn, dismissed, or determined on the merits in favor of the subject of the report—apply when petitioner requested administrative review of the indicated report and Family Court dismissed a proceeding involving the same circumstances prior to the amendment's effective date, but the fair hearing occurred after the effective date;**

Supreme Court, New York County, denied the petition to annul a determination of respondent, the New York State Office of Children and Family Services, dated March 24,

2022, denying petitioner's request to amend and seal her record in the Statewide Central Register of Child Abuse and Maltreatment (SCR), and dismissed the proceeding brought pursuant to CPLR article 78; App. Div. modified to dismiss the petition as against Administration for Children's Services, and, as so modified, affirmed.