



*State of New York
Court of Appeals*

Vol. 44 - No. 13
4/5/24

*Lisa Le Court
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

March 29, 2024 through April 4, 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.

HOBISH v AXA:

1st Dept. App. Div. order of 3/19/24; affirmance; leave to appeal granted by the Appellate Division, 3/19/24 with a certified question;

Insurance—Whether plaintiff may seek breach of contract damages based on the contract's loss in value caused by a breach after receiving funds due on termination of the contract; whether plaintiff may seek damages under General Business Law § 349 without showing plaintiff is entitled to breach of contract damages; whether punitive damages are recoverable under General Business Law § 349; whether punitive damages are recoverable for breach of contract when defendant allegedly deceived a state regulator and plaintiff; whether an insurance contract must be construed based on the reasonable expectations of the average insured;

Supreme Court, New York County, denied plaintiffs' motion for summary judgment on the issue of liability on their breach of contract cause of action, denied defendant's

motion for summary judgment dismissing the complaint against it, and granted defendant's motion for summary judgment to the extent of dismissing certain categories of damages sought by plaintiff; App. Div. affirmed.

MATTER OF HUSEJNOVIC v DEPROSPO:

2nd Dept. App. Div. order of 3/6/24; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Whether application of the CPLR article 78 standard of review to the determination of a pistol licensing officer violates the Second Amendment; whether the Appellate Division denied petitioner/plaintiff's Second Amendment rights by affirming the denial of petitioner/plaintiff's application; whether the Appellate Division improperly applied section 400.00 of the Penal Law in violation of the Second Amendment;

App. Div. in a hybrid proceeding under CPLR article 78, among other things, to review a determination of respondent, a former Judge of the County Court, Orange County, dated November 18, 2022, which denied the application of the petitioner/plaintiff for a pistol license, and action for declaratory relief, confirmed determination, denied petition, and dismissed proceeding/action.

MATTER OF THE PEOPLE BY JAMES v VDARE:

1st Dept. App. Div. order of 2/15/24; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support the appeal taken as of right;

Attorney General—Investigatory Powers—Whether the Appellate Division erred by ordering VDARE to turn over the names of its anonymous and pseudonymous writers; whether the Appellate Division erred by holding that VDARE failed to make a prima facie showing that turning over its writers and vendors would chill its free speech and free association rights; whether state law presumptions in favor of the Attorney General mask constitutional violations; whether the Appellate Division failed to assess whether the investigatory subpoena complied with *Americans for Prosperity Found. v Bonta*, 141 S Ct 2372 (2021);

Supreme Court, New York County, granted petitioner's motion to compel compliance with the subpoena duces tecum dated June 23, 2022, subject to certain agreed-to redactions, and to produce a redaction log, and denied respondent's motion to dismiss; App. Div. affirmed.

KATLESKI v CAZENOVIA GOLF CLUB:

3rd Dept. App. Div. order of 3/14/24; reversal;

Negligence—Assumption of Risk—Whether the Appellate Division properly held that plaintiff assumed the risk of being struck by an errant golf ball, while acknowledging differing expert opinions and identifying disputes on whether defendant golf course unreasonably increased the risk to plaintiff;

Supreme Court, Madison County, denied motion by defendant Cazenovia Golf Club, Inc. for summary judgment dismissing the complaint against it; App. Div., with two Justices dissenting, reversed, granted motion for summary judgment, and dismissed the complaint.