



*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

December 14 through December 20, 2018

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.

NATIONAL FUEL GAS SUPPLY CORP., MATTER OF v SCHUECKLER et al.:

4TH Dept. App. Div. order of 11/9/18; reversal with dissents;

Eminent Domain--Exemption from Public Hearing--Whether petitioner natural gas company held qualifying federal permit under Eminent Domain Procedure Law (EDPL) 206(A), thereby exempting it from standard hearing and findings procedure of EDPL article 2; Federal Energy Regulatory Commission granted petitioner's application for a certificate of public convenience and necessity to construct 97-mile natural gas pipeline across respondents' land, but State Department of Environmental Conservation denied petitioner's application for water quality certification (WQC); federal certificate of public convenience allowed construction of pipeline subject to various conditions, including State's issuance of WQC;

Supreme Court, Allegheny County, granted the petition for the acquisition of easements; App. Div. reversed and dismissed the petition.

REGINA METROPOLITAN CO., LLC, MATTER OF v NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL:

1ST Dept. App. Div. order of 8/16/18, corrected 9/5/18; modification; leave to appeal granted by App. Div., 12/4/18;

Landlord and Tenant--Rent--Whether method used by respondent New York State Division of Housing and Community Renewal (DHCR) to calculate rent overcharge for apartment, which looked beyond the four-year limitations period to determine base date rent, was arbitrary and capricious; landlord improperly deregulated apartment while receiving J-51 tax benefits.;

Supreme Court, New York County, (1) denied the CPLR article 78 petitions to modify a determination of respondent DHCR, which affirmed a 2/26/14 order of the rent administrator that calculated a base date rent by looking back more than four years from the rent overcharge complaint, and denied petitioner tenants' requests for treble damages and attorneys' fees; and (2) dismissed the proceedings; App. Div. modified by granting landlord's petition to the extent of remanding the matter to respondent DHCR to recalculate the base date rent by looking back to four years before the filing of the overcharge complaint; and otherwise affirmed.

TAYLOR et al. v 72A REALTY ASSOCIATES, L.P., et al.:

1ST Dept. App. Div. order of 5/25/17; modification; leave to appeal granted by App. Div., 12/13/18;

Landlord and Tenant--Rent Regulation--Action to recover rent overcharges for apartment leased as exempt from rent regulation while landlord received tax incentives under the City's J-51 program--Whether the Appellate Division erred in recognizing a residential rent overcharge computation starting more than four years before the action was commenced, and failing to dismiss the plaintiffs' claim for treble damages; effect of expiration of landlord's tax exemption/abatement (J-51) status in the 2002/2003 tax year;

Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the complaint to the limited extent of dismissing the complaint as to Janet Zinberg, and granted plaintiffs' cross motion (1) for a declaration that the subject apartment is rent stabilized and that they are the rent stabilized tenants and (2) for dismissal of defendants' seventh and ninth affirmative defenses; App. Div. modified solely to declare that the increases made to the rent-stabilized rent in 2000, based upon individual apartment improvements (IAs) before plaintiffs took occupancy, were legally permissible, and otherwise affirmed.