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COURT OF APPEALS NEW FILINGS

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

September 18, 2020 through September 24, 2020

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.

COLLATERAL LOANBROKERS ASSOCIATION OF NEW YORK, INC., et al. v CITY OF NEW YORK, et al.:
1ST Dept. App. Div. order of 12/26/19; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Brokers--Loan Brokers--Collateral Loan Brokers--Whether various statutes, regulations and procedures that monitor the business activities of pawnbrokers and second-hand dealers violate New York State's constitutional prohibition against unreasonable searches and seizures by establishing electronic reporting requirements and authorizing on-premises administrative searches by the NYPD and the New York City Department of Consumer Affairs;**

Supreme Court, Bronx County, granted plaintiffs' motion for summary judgment, inter alia, enjoining defendants from enforcing General Business Law § 45, New York City Charter §§ 435 and 436, Local Law No. 149 of 2013 and the resulting amendments to Administrative Code of City of New York §§ 20-267, 20-273, and 20-277, Rules of City of New York Department of Consumer Affairs (6 RCNY) § 1-16 and Police Department (38 RCNY) §§ 21-03(a) and (b), 21-04(a) and (c), 21-07(a)-(f), and 21-08, and the procedures outlined in a 1998 memorandum by then New York Police Department Deputy Commissioner of Legal Matters George A. Grasso, and in New York Police Department Patrol Guide Procedure No. 214-38, and denied defendants' motion for summary judgment dismissing the action in its entirety; App. Div. modified, by denying plaintiffs' motion and granting defendants' motion as to all the cited statutes, regulations and procedures, except New York City Charter § 436, and otherwise affirmed.

ENDARA-CAICEDO, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, et al.:
1ST Dept. App. Div. order of 2/13/20; affirmance; leave to appeal granted by Court of Appeals, 9/10/20;
Motor Vehicles--Revocations or Suspension of Operator's License--Whether Vehicle and Traffic Law § 1194 (2) permits the refusal of a motorist arrested for operating a motor vehicle while under the influence of alcohol or drugs to submit to a chemical test to be used against the motorist in administrative license revocation hearings even if the chemical test is offered, and the refusal occurs, more than two hours after the motorist's arrest;
Supreme Court, Bronx County, denied the petition to annul the determination of respondent New York State Department of Motor Vehicles, dated 2/28/17, which, after a hearing, revoked petitioner's license to drive for at least one year and imposed a $500 civil penalty, and dismissed the proceeding brought pursuant to CPLR article 78; App. Div. affirmed.

KEY BANK,. N.A. v KING &c.:
3RD Dept. App. Div. order of 7/31/20; denial of reargument; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Mortgages--Foreclosure;
Supreme Court, Albany County, granted plaintiff's motion for summary judgment and referred the mater to a referee to, inter alia, compute the amount due to plaintiff; App. Div. denied appellant's motion for reargument and for permission to appeal; and granted defendant's cross motion to dismiss the appeal.

MANKO v GABAY, et al.:
2ND Dept. App. Div. order of 7/29/20; 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 an appeal as of right;
Appeal--Appealable order;
App. Div. denied a motion seeking various relief.

MANKO v LENOX HILL ANESTHESIOLOGY, PLLC, et al.:
2ND Dept. App. Div. order of 8/7/20; 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 an appeal as of right;
Appeal--Appealable Order;
App. Div., inter alia, denied the motion to recall and vacate so much of an order of the App. Div. dated 2/8/11, as dismissed an appeal from an order of Supreme Court, Kings County, dated 7/8/09.

MATTER OF MARGARET M. M.:
2ND Dept. App. Div. order of 8/14/20; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Parent, Child and Family--Appeal from Appellate Division order denying motion for various relief;
Family Court, Kings County, in eight orders (one dated 8/7/19; four dated 8/29/19; two dated 9/18/29 and one dated 11/14/19) denied various requests for relief; App. Div. denied as academic that branch of appellant's motion seeking an order directing that one of the subject children be provided with a room air conditioner and denied that branch of the motion seeking to direct the Administration for Children's Services to provide a nurse to confirm that the room air conditioner has been installed in the subject child's room and to report on the health status of the subject child.

STATE OF NEW YORK, MATTER OF v DONALD G.:
4TH Dept. App. Div. order of 8/20/20; reversal and denied the motion, and reinstated the jury verdict;
Trial--Verdict--Setting Verdict Aside--Whether Supreme Court properly granted petitioner's motion to set aside the verdict pursuant to CPLR 4404(a) on the ground of juror misconduct; proceeding pursuant to Mental Hygiene Law article 10;
Supreme Court, Cayuga County, granted petitioner's motion to set aside a jury verdict and ordered a new trial; App. Div. reversed, denied the motion and reinstated the jury verdict.

NEMETH, etc. v BRENNTAG NORTH AMERICA, etc, et al.:
1ST Dept. App. Div. order of 4/9/20; modification; leave to appeal granted by App. Div. 8/13/20; Rule 500.11 review pending;
Products Liability--Exposure to Toxic Substances--Whether plaintiff presented sufficient evidence that her peritoneal mesothelioma was caused by respirable asbestos contained in talcum powder used by plaintiff over an 11-year period; defendant supplied asbestos-contaminated talc for talcum powder; Trial--Fair Trial--whether plaintiff's counsel's remarks on summation and the trial court's failure to issue a curative instruction deprived defendant of a fair trial;
Supreme Court, New York County, upon a jury verdict, awarded plaintiff the principal amount of $2,933,750; App. Div. modified to the extent of increasing the principal amount of the judgment to $3,300,000 and otherwise affirmed.

WILLIAMS (DON), PEOPLE v:
4TH Dept. App. Div. order of 6/12/20; affirmance; leave to appeal granted by Fahey, J., 9/1/20;
Crimes--Instructions--Whether the trial court erred when, in response to a jury note, it projected a portion of the court's final instructions on a screen in view of the jury and simultaneously reread that portion of the charge to the jury; Crimes--Fair Trial--Whether defendant was deprived of a fair trial by a remark made by the court and comments of the prosecutor on summation and during cross-examination; Crimes--Jurors--Whether the trial court erred in denying defendant's for cause challenge of a prospective juror;
Supreme Court, Monroe County, convicted defendant ofcriminal possession of a controlled substance in the third degree and criminal possession of a weapon in the second degree; App. Div. affirmed.