

COURT OF APPEALS NEW FILINGS

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

June 11, 2021 through June 17, 2021

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.

BORELLI, et al., MATTE R OF v CITY OF YONKERS:

2ND Dept. App. Div. order of 10/14/20; affirmance; leave to appeal granted by Court of Appeals, 4/29/21;

Civil Service--Firefighters--Whether petitioners, retired disabled firefighters and fire officers, are entitled to compensation for night differential, check-in pay, and holiday pay under General Municipal Law § 207-a (2);

Supreme Court, Westchester County, denied that branch of the CPLR article 78 petition to annul so much of the respondent's determination as excluded from the supplemental benefits paid to the petitioners pursuant to General Municipal Law § 207-a(2) certain compensation paid to active firefighters for night differential, check-in pay, and holiday pay; App. Div. affirmed.

DCH AUTO, &c., et al., MATTER OF v TOWN OF MAMARONECK, &c., et al.:
2ND Dept. App. Div. order of 12/11/19; affirmance; leave to appeal granted by Court of Appeals, 6/3/21;

Taxation--Assessment--Whether petitioner, lessee of premises on which it paid real estate taxes, failed to satisfy a condition precedent to the commencement of an RPTL article 7 proceeding; petitioner filed administrative complaints under RPTL 524 in its own name rather than in the owner's name and was not identified in the complaints as an agent of the owner;

Supreme Court, Westchester County, dismissed the consolidated proceeding insofar as it sought review of certain real estate tax assessments of a certain parcel of real property; App. Div. affirmed.

558 SEVENTH AVE. CORP., et al. v TIMES SQUARE PHOTO INC. et al.:

1ST Dept. App. Div. order of 5/20/21; reversal; 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;

Landlord and Tenant--Action to recover unpaid rent; alleged constitutional violations;

Supreme Court, New York County, denied plaintiffs' motion for summary judgment as to liability against defendant Times Square Photo Inc. and sua sponte dismissed the complaint ; App. Div. reversed, reinstated the complaint, and granted plaintiffs' motion as to the first cause of action.

GOLDMAN v CITY OF NEW YORK et al.:

1ST Dept. App. Div. orders of 1/14/21 and 4/29/21; affirmance and denial of reargument; sua sponte examination of whether the 4/29/21 App. Div. order appealed from finally determines the action within the meaning of the Constitution and with respect to the 1/14/21 App. Div. order, whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer--Whether the courts below erred by concluding that respondent's rejection of petitioner's application to work as a substitute teacher was rationally based on petitioner's employment history and a failure to fulfill respondent's 20-day minimum substitute teaching requirement for the 2014-2015 school year;

Supreme Court, New York County, denied petition to reinstate petitioner to good standing with respondent Department of Education, and directed Clerk to enter judgment dismissing the CPLR article 78 proceeding; App. Div. affirmed.

HETELEKIDES, &c. v COUNTY OF ONTARIO, et al.:

4TH Dept. App. Div. order of 4/30/21; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Taxation--Tax Liens, Tax Sales and Tax Titles--Whether tax foreclosure proceeding, commenced against deceased individual, was nullity; alleged due process violations;** Supreme Court, Ontario County, among other things, awarded plaintiff money damages as against defendant; App. Div. modified by vacating the first, seventh, eighth, tenth and eleventh ordering paragraphs of the order entered 1/3/20, and as so modified, affirmed.

LALAND, MATTER OF v BOOKHART et al.:

2ND Dept. App. Div. order of 5/6/20; affirmance; leave to appeal granted by Court of Appeals, 5/27/21;

Parent, Child and Family--Abused or Neglected Child--Whether Interstate Compact on the Placement of Children applies to out-of-state, noncustodial parent; out-of-state authority would not consent to placing child with the father;

Family Court, Suffolk County, dismissed father's petitions for custody of the subject child; App. Div. affirmed.

U.S. BANK NATIONAL ASSOCIATION, &c. v HARRIS; IWACHIW (AND THREE OTHER ACTIONS):

2ND Dept. App. Div. order of 5/3/21; 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;

Motions and Orders;

App. Div. denied motion, among other things, to extend the time to perfect appeals.