

COURT OF APPEALS NEW FILINGS

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

November 9, 2012 through November 15, 2012

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.

CARTER (DARNELL D.), PEOPLE v:

4TH Dept. App. Div. order of 6/15/12; modification; leave to appeal granted by Ciparick, J., 10/4/12;

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER CONSECUTIVE SENTENCES UNDER PENAL LAW § 70.25(2) WERE PERMISSIBLE WHERE DEFENDANT WAS CONVICTED OF MURDER IN THE SECOND DEGREE AND POSSESSION OF A WEAPON IN THE SECOND DEGREE, AND THE POSSESSION CHARGE DID NOT REQUIRE INTENT AS AN ELEMENT;

Niagara County Court convicted defendant, upon a jury verdict, of two counts of murder in the second degree, two counts of robbery in the first degree, criminal use of a firearm in the first degree and criminal possession of a weapon in the second degree; App. Div. modified by directing that all sentences imposed shall run concurrently.

GRANGER, MATTER OF v MISERCOLA:

4TH Dept. App. Div. order of 6/29/12; affirmance; leave to appeal granted by Court of Appeals, 10/30/12;
PARENT AND CHILD - VISITATION - WHETHER THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A GRANT OF VISITATION RIGHTS TO AN INCARCERATED PARENT; STANDARD OF REVIEW; BEST INTEREST OF THE CHILD - FAMILY COURT ACT ARTICLE 6;
Family Court, Jefferson County granted the father's petition for visitation; App. Div. affirmed.

ROCKY POINT DRIVE-IN, L.P. v TOWN OF BROOKHAVEN, et al.:

2ND Dept. App. Div. order of 3/6/12; reversal; leave to appeal granted by Court of Appeals, 10/25/12;
MUNICIPAL CORPORATIONS - ZONING - NONCONFORMING USE - DELAY IN PROCESSING OF SITE PLAN APPLICATION - WHETHER APPELLATE DIVISION MISAPPLIED THE "SPECIAL FACTS EXCEPTION" BY REQUIRING PLAINTIFF TO PROVE THAT DEFENDANTS ACTED IN BAD FAITH IN DELAYING THE PROCESSING OF THE APPLICATION; DECLARATORY JUDGMENT ACTION;
Supreme Court, Suffolk County granted judgment in favor of plaintiff and against defendants declaring that defendants' intentional bad faith delay in reviewing and processing plaintiff's site plan application constitutes "special facts" which entitle plaintiff to have its site plan application reviewed in accordance with the zoning designation that was in effect on the day that plaintiff's site plan application was filed, and that plaintiff is not required to apply for or obtain a variance; App. Div. reversed and declared that plaintiff is not entitled to have its site plan application reviewed in accordance with the zoning designation that was in effect on the day that plaintiff's site plan application was filed, and dismissed the cross appeal as academic.