

COURT OF APPEALS NEW FILINGS

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

November 30, 2012 through December 6, 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.

ASSOCIATION FOR A BETTER LONG ISLAND, et al., MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

3RD Dept. App. Div. order of 7/26/12; affirmance; leave to appeal granted by Court of Appeals, 11/27/12;

PARTIES - STANDING - CHALLENGE TO ENVIRONMENTAL REGULATIONS REQUIRING AN "INCIDENTAL TAKE" PERMIT FOR ANY ACTIVITIES LIKELY TO RESULT IN THE "TAKING" OF ANY ENDANGERED OR THREATENED SPECIES - CHALLENGE BY OWNERS OF PROPERTY THAT CONTAINS OR IS IN PROXIMITY TO ENDANGERED OR THREATENED SPECIES, BUT WHO HAVE NOT FILED APPLICATIONS FOR AN "INCIDENTAL TAKE" PERMIT - SPECULATIVE HARM - PROCEDURAL CHALLENGES - RIPENESS OF SUBSTANTIVE CHALLENGES;

Supreme Court, Albany County, in a combined proceeding pursuant to CPLR article 78 and declaratory judgment action, granted the state respondents' motion to dismiss the petition; App. Div. affirmed.

BOYER (DANIEL), PEOPLE v:

3RD Dept. App. Div. order of 1/26/12, as amended by order entered 3/29/12; affirmance; leave to appeal granted by Read, J., 9/12/12;

CRIMES - SENTENCE - PERSISTENT VIOLENT FELONY OFFENDER - WHETHER A PRIOR CONVICTION CAN BE CONSIDERED A PREDICATE FELONY CONVICTION FOR SENTENCING PURPOSES WHERE THE CONVICTION WAS LATER DETERMINED TO BE SUBJECT TO RESENTENCING UNDER PEOPLE v SPARBER (10 NY3d 457), THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION SOUGHT RESENTENCING AND RESENTENCING OCCURRED AFTER THE CRIME DEFENDANT COMMITTED IN THIS CASE; PLEA OF GUILTY - WHETHER THE PLEA WAS KNOWING, VOLUNTARY AND INTELLIGENT; Albany County Court convicted defendant upon his guilty plea of the crime of attempted burglary in the second degree; App. Div. affirmed.

GONZALEZ, MATTER OF v DIVISION OF HOUSING AND COMMUNITY RENEWAL OF THE STATE OF NEW YORK:

1ST Dept. App. Div. order of 5/22/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

LANDLORD AND TENANT - RENT REGULATION - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS DIVISION OF HOUSING AND COMMUNITY RENEWAL'S (DHCR'S) FINDING THAT THE BUILDING AT ISSUE HAD BEEN SUBSTANTIALLY REHABILITATED WITHIN THE MEANING OF RENT STABILIZATION CODE (9 NYCRR) § 2520.11(e) AND DHCR'S OPERATIONAL BULLETIN 95-2; LACHES; ESTOPPEL;

Supreme Court, New York County denied a CPLR article 78 petition to annul a determination of respondent DHCR affirming an order of the DHCR Rent Administrator granting respondent-owners' application for a substantial rehabilitation exemption from rent stabilization; thereafter, Supreme Court dismissed the proceeding; App. Div. affirmed.

JACOBSEN v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION:

1ST Dept. App. Div. order of 7/10/12; affirmance; leave to appeal granted by App. Div., 10/2/12; Rule 500.11 review pending;

CIVIL RIGHTS - DISCRIMINATION BASED ON DISABILITY - OCCUPATIONAL LUNG DISEASE - WRONGFUL TERMINATION - EMPLOYEE'S ABILITY TO PERFORM ESSENTIAL JOB DUTIES - REASONABLE ACCOMMODATION; SUMMARY JUDGMENT - EXISTENCE OF TRIABLE ISSUES OF FACT;

Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

WL, LLC, MATTER OF v NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT:

3RD Dept. App. Div. order of 5/3/12; modification; leave to appeal granted by Court of Appeals, 11/29/12;

PROCEEDING AGAINST BODY OR OFFICER - ELIGIBILITY TO PARTICIPATE IN EMPIRE ZONE PROGRAM - WHETHER EMPIRE ZONE DESIGNATION BOARD GAVE PETITIONER (1) ADEQUATE NOTICE OF ITS INTENT TO REVOKE PETITIONER'S CERTIFICATION AS AN EMPIRE ZONE BUSINESS ENTERPRISE AND (2) A MEANINGFUL OPPORTUNITY TO BE HEARD BEFORE MAKING THE CHALLENGED DETERMINATION - WHETHER PETITIONER WAS ENTITLED TO A HEARING BEFORE THE BOARD AND WHETHER THE MANNER IN WHICH THE BOARD CONSIDERED PETITIONER'S APPEAL AFFORDED PETITIONER DUE PROCESS; STANDARD OF REVIEW USED BY THE APPELLATE DIVISION; DISMISSAL OF CAUSES OF ACTION SEEKING A DECLARATORY JUDGMENT; EXCLUSION OF PETITIONER'S YEAR 2000 INVESTMENTS; WHETHER THE CHALLENGED DETERMINATION WAS ARBITRARY AND CAPRICIOUS; Supreme Court, Albany County dismissed petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to review a determination of respondent Empire Zone Designation Board revoking petitioner's certification as an empire zone business enterprise; App. Div. modified by reversing so much of the judgment as dismissed that part of the petition/complaint seeking a declaration that the April 2009 amendments to General Municipal Law § 959 may not be applied retroactively to January 1, 2008; granted the petition/complaint to that extent and declared that said amendments shall be applied prospectively; and affirmed the judgment as so modified.