



*State of New York
Court of Appeals*

Vol. 43 - No. 50
12/28/23

*Lisa LeCours
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

December 15, 2023 through December 21, 2023

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.

BANK OF AMERICA v REDD:

2nd Dept. App. Div. order of 10/18/23; denial; 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—Matters Appealable;

Supreme Court, Nassau County, brought on a motion for a stay; App. Div., inter alia, denied leave to appeal and dismissed the appeal purportedly taken as of right.

MATTER OF CORNING NATURAL GAS v PUBLIC SERVICE COMMISSION:

3rd Dept. App. Div. order of 11/2/23; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Substantial Evidence—Whether substantial

evidence supports that part of respondent's order imposing COVID-19 related austerity measures disallowing wage increases to nonunion workers, removing the allowance for certain new employees, removing accelerated amortization for leak-prone pipes and modifying the amortization period for regulatory assets and liabilities; whether respondent's order setting rates and rate plan was just and reasonable; whether respondent's order denying petitioner's rate deferral petition is supported by substantial evidence; whether that portion of respondent's rate order providing for a 3% wage increase only for union employees violates the equal protection clause or the National Labor Relations Act;

App. Div. confirmed the determination of respondent establishing petitioner's rate for gas service, and dismissed the CPLR article 78 petition.

RUFUS (PARRIS), PEOPLE v.:

4th Dept. App. Div. order of 10/6/23; affirmance; leave to appeal granted by Curran, J., 11/16/23;

Motor Vehicles—Operating Vehicle while Under Influence of Alcohol or Drugs—Whether the police officer lawfully stopped defendant's car for crossing the white fog line; whether the evidence was legally sufficient to establish that defendant was intoxicated;

County Court, Monroe County, convicted defendant, upon a nonjury verdict, of driving while intoxicated, as a class E felony; App. Div., with two Justices dissenting, affirmed.

MATTER OF TRUMP v ENGORON:

1st Dept. App. Div. order of 12/14/23; dismissal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Writ of prohibition seeking to vacate and annul gag orders and contempt orders;

App. Div. dismissed the CPLR article 78 proceeding seeking review of four orders of Supreme Court, New York County, entered October 3, 2023, November 3, 2023, October 20, 2023, and October 26, 2023.

PEOPLE v WILLIAMS (RAYMOND):

1st Dept. App. Div. order of 5/9/23; affirmance; leave to appeal granted by Mendez, J., 7/6/23;

Crimes—Burglary—Whether the evidence was legally sufficient to establish that defendant committed third-degree burglary;

Supreme Court, New York County, convicted defendant, after a jury trial, of burglary in the third degree, and sentenced him, as a second felony offender, to a term of 3 ½ to 7 years; App. Div., with two Justices dissenting, affirmed.

WU v UBER TECHNOLOGIES:

1st Dept. order of 9/21/23; affirmance; leave to appeal granted by the Appellate Division, 12/12/23;

Arbitration—Agreement to Arbitrate—Whether the courts below properly determined that an agreement to arbitrate existed between plaintiff and Uber; whether the ethical rule prohibiting an attorney from contacting a represented party prevents a corporation from including an agreement to arbitrate a pending lawsuit in its terms of service in its software application; whether it was reasonable for plaintiff to expect that assenting to an update to the application’s terms of use would affect her pending lawsuit in which she was represented by counsel; whether the Federal Arbitration Act preempts New York’s law on arbitration clauses; whether the purported agreement was unconscionable; whether Uber may rely on its prior 2016 terms of service;

Supreme Court, Bronx County, denied plaintiff’s motion to stay defendant Uber Technologies, Inc.’s demand for arbitration and to sanction Uber, and granted Uber’s motion to compel arbitration; App. Div. affirmed.