



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

June 17, 2022 through June 23, 2022

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.

HEISERMAN (MICHAEL), PEOPLE v:

3rd Dept. App. Div. order of 4/21/22; reversal; leave to appeal granted by Colangelo, J., 6/7/22;

Crimes--Justification--Whether County Court erred in denying defendant's request for a jury charge on the defense of justification;

County Court, Franklin County, convicted defendant of assault in the second degree and imposed sentence; App. Div. reversed and remitted to County Court for a new trial.

MADIGAN v BERKELEY CAPITAL LLC:

2nd Dept. App. Div. order of 5/18/22; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Witnesses-Subpoena; Contempt--Civil and Criminal Contempt; Costs--Counsel Fees;

Supreme Court, Kings County, inter alia, (1) denied that branch of the plaintiff's motion which was to vacate a stay issued in an order of the same court dated November 6, 2017, and granted those branches of the motion of the defendants Oceana Holding Corp. and Rosa Bronstein which were to quash certain subpoenas and for an award of costs in the sum of \$2,500, and (2) denied those branches of the separate motion of the defendants Oceana Holding Corp. and Rosa Bronstein which were to hold the plaintiff's counsel in civil and criminal contempt, for an award of attorney's fees pursuant to 22 NYCRR 130-1.1, for referral to the Grievance Committee, and to disqualify the plaintiff's attorney; App. Div. modified (1) by deleting the provision of the October 22, 2018 Supreme Court order denying that branch of the motion of the defendants Oceana Holding Corp. and Rosa Bronstein which was to hold the plaintiff's counsel in criminal contempt, and substituting therefor a provision granting that branch of the motion imposing a criminal sanction in the amount of \$10,000, and (2) by deleting the provision thereof denying that branch of the motion of the defendants Oceana Holding Corp. and Rosa Bronstein which was for an award of attorney's fees pursuant to 22 NYCRR 130-1.1, and substituting therefor a provision granting that branch of the motion; and, as so modified, affirmed the order insofar as appealed and cross-appealed from, with costs to the defendant Oceana Holding Corp., and remitted the matter to Supreme Court for a determination of the amount of an award of reasonable attorney's fees in accordance herewith.

STEVENS, MATTER OF v NYS DIVISION OF CRIMINAL JUSTICE SERVICES:

1st Dept. App. Div. order of 5/5/22; reversal with two-Justice dissent;

Parties--Standing--Whether petitioners, relatives of persons whose genetic profiles are in the New York State DNA database, have standing to challenge regulations adopted by respondents governing familial DNA searches; Constitutional Law--Separation of Powers--Whether respondents exceeded their authority in promulgating familial DNA search regulations;

Supreme Court, New York County, denied the petition to, among other things, annul the Familial DNA Search Regulations codified at 9 NYCRR 6192.1 and 6192.3 on October 18, 2017, and dismissed the CPLR article 78 proceeding; App. Div., inter alia, reversed, granted the petition and vacated Familial DNA Search Regulations.

TEAMSTERS LOCAL 445 v MONROE:

Supreme Court, judgment of 1/24/22; sua sponte examination of whether prior nonfinal App. Div. order directly involves a substantial constitutional question;

Arbitration--Collective Bargaining Agreement--Whether there is a statutory, constitutional, or public policy prohibition against arbitrating a dispute regarding the termination of an employee in an "exempt class" under Civil Service Law section 41 (1)(c);

Supreme Court, Dutchess County, in a proceeding pursuant to CPLR article 75 to compel arbitration, denied the motion of the Town of Monroe to dismiss the petition; App. Div.

affirmed, Supreme Court granted the petition to compel arbitration.