



*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

December 8, 2023 through December 14, 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.

MATTER OF TOWN OF COPAKE v NYS OFFICE OF RENEWABLE ENERGY
SITING:

3rd Dept. App Div. order of 5/18/23; dismissal; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved in the order appealed;

Environmental Conservation—Environmental Quality Review Act—Whether respondent Office of Renewable Energy Siting violated State Environmental Quality Review Act in rendering negative declaration relating to promulgation of regulations governing large renewable energy projects; Administrative Law—Rule Making—Whether waiver provision of regulations, which granted respondent limited authority to preempt local laws in certain circumstances, is unconstitutional under the home rule provision, unconstitutionally vague, or otherwise invalid;

Supreme Court, Albany County, denied petitioner's motion for a preliminary injunction; Supreme Court, Albany County, dismissed petitioners' application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to review certain regulations promulgated by respondent Office of Renewable Energy Siting; App. Div. dismissed the appeal from the order and affirmed the judgment.

FREDERICKS (DIVINE), PEOPLE v.:

1st Dept. App. Div. order of 6/22/23; affirmance; leave to appeal granted by Rivera, J., 11/29/23;

Crimes—Right to Counsel—Whether the trial court properly denied defendant's request for new counsel; whether the trial court was required to inquire further concerning defendant's request; whether counsel improperly took a position adverse to his client in opposing defendant's request; whether defendant's CPL 440.10 motion was properly denied without a hearing; whether defendant received effective assistance of counsel;

Supreme Court, Bronx County, convicted defendant of murder in the second degree, attempted murder in the second degree and criminal possession of a weapon in the second degree, and sentenced him, as a persistent violent felony offender, to an aggregate term of 45 years to life; Supreme Court, Bronx County, denied defendant's CPL 440.10 motion to vacate the judgment; App. Div. affirmed.

MATTER OF JACK R.T. JORDAN:

1st Dept. App. Div. order of 7/6/23; disbarment; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client—Disciplinary Proceedings—Reciprocal Discipline;

App. Div. granted respondent's motion for reciprocal discipline pursuant to 22 NYCRR 1240.13 and disbarred appellant.

MATTER OF MASTER BUILT HOMES v NYC DEPARTMENT OF BUILDINGS:

2nd Dept. App. Div. order of 10/18/23; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Whether Department of Parks has authority to demand restitution for the removal of trees in streets not owned by City; whether demand for restitution constituted a taking;

Supreme Court, Richmond County, inter alia, (1) denied that branch of the petition/complaint which was for relief pursuant to CPLR article 78 with respect to real property owned by the petitioner/plaintiff NJJU Development, LLC, at 102 Maple Parkway and, in effect, dismissed that portion of the proceeding; and (2) directed a trial pursuant to CPLR 7804(h) on those branches of the petition/complaint which were for relief pursuant to CPLR article 78 with respect to real properties owned by the petitioners/plaintiffs Channelside 608–T2 Realty, LLC, 7335 Amboy Road, LLC, Foxbeach Construction

Corp., and Cee Jay Real Estate Development Corp.; App. Div. affirmed the order and interlocutory judgment and dismissed the cross appeal.

MATTER OF ESTATE OF ALAN PRINCE:

1st Dept. App. Div. order of 9/28/23; denial; sua sponte examination of whether the order appealed from finally determines the proceeding 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 for leave to appeal to this Court.

PUSATERE v CITY OF ALBANY:

3rd Dept. App. Div. order of 3/2/23; modification; leave to appeal granted by the Court of Appeals, 11/21/23;

Statutes—Preemption by State—Whether the City of Albany’s enactment of a local law requiring “good cause” as a pre-condition to a landlord’s termination of certain residential lease agreements was preempted by State Law, particularly RPAPL 711, RPL 226-c, RPL 228, and certain statewide rent control laws;

Supreme Court, Albany County, among other things, granted plaintiffs’ motion for summary judgment declaring the City of Albany Local Law F of 2021 null and void; App. Div. modified, by reversing so much of Supreme Court's order as granted plaintiffs' motion for summary judgment to the extent it declared the Code of the City of Albany section 30-323 null and void; denied plaintiffs' motion denied to that extent; granted defendants' cross motion to the extent of dismissing the portions of the complaint challenging section 30-323 and dismissed the complaint to that extent, declared that section 30-323 is valid, and as so modified, affirmed.