

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 15 through August 21, 2008

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.

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.

ALEMAN (JUAN CARLOS), PEOPLE v:

1ST Dept. App. Div. order of 2/19/08; affirmance; leave to appeal granted by Pigott, J., 8/5/08;

CRIMES AND CRIMINAL PROCEDURE - INSTRUCTIONS - WHETHER TRIAL COURT'S SUPPLEMENTAL INSTRUCTION TO JURORS DEPRIVED DEFENDANT OF A FAIR TRIAL;

Supreme Court, New York County convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the first and third degrees, and sentenced him to concurrent terms of 25 years to life and 8 1/3 to 25 years; App. Div. affirmed.

BUTLER &c. et al. v CITY OF GLOVERSVILLE, et al.:

3RD Dept. App. Div. order of 6/5/08; reversal with dissents; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - DUTY TO MAINTAIN PLAYGROUND FACILITIES IN REASONABLY SAFE CONDITION; PROXIMATE CAUSE OF INJURY TO CHILD FALLING FROM PLAYGROUND SLIDE; SUMMARY JUDGMENT;

Supreme Court, Fulton County denied defendants' motions for summary judgment; App. Div. reversed, granted defendants' motions for summary judgment, awarded summary judgment to defendants and dismissed the complaint.

HYNES v SONIDO, INC.:

1ST Dept. App. Div. order of 4/3/08; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CONTRACTS - CONSTRUCTION AND INTERPRETATION - SALES CONTRACT - ALLEGED AMBIGUITY IN CONTRACT TERM; SUMMARY JUDGMENT; CLAIMED VIOLATION OF DUE PROCESS;

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

KOEHL, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 6/19/08; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the appeal was timely taken in the manner required by CPLR 5515(1);

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO VIOLATING THE PRISON DISCIPLINARY RULE THAT PROHIBITS HARASSMENT; CLAIMED VIOLATION OF PRISONER'S DUE PROCESS RIGHTS;

App. Div. confirmed the determination of Commissioner of Correctional Services which found petitioner guilty of violating a prison disciplinary rule.

MATTOCKS (JONATHAN), PEOPLE v:

1ST Dept. App. Div. order of 4/8/08; affirmance; leave to appeal granted by Pigott, J., 8/6/08;

CRIMES AND CRIMINAL PROCEDURE - FORGERY - WHETHER A NEW YORK CITY TRANSIT METROCARD, "BENT" SO THAT IT COULD BE USED TO ENTER THE SUBWAY SYSTEM WHEN IT CONTAINED A ZERO BALANCE, CONSTITUTES A FORGED INSTRUMENT WITHIN THE MEANING OF PENAL LAW § 170.00; SUPPRESSION MOTION DENIED;

Supreme Court, New York County convicted defendant of criminal possession of a forged instrument in the second degree and sentenced him, as a second felony offender, to a term of 2 to 4 years; App. Div. affirmed.

SCHOSEK &c. et al. v AMHERST PAVING, INC. et al.:

4TH Dept. App. Div. order of 7/3/08; affirmance with dissents;

Rule 500.11 review pending;

NEGLIGENCE - DUTY - WHETHER ROAD CONSTRUCTION CONTRACTOR HAD A DUTY OF CARE TO PERSONS TRAVELING ON ROAD BEING REPAVED - HEIGHT DIFFERENTIAL BETWEEN TRAVELED PORTION OF ROAD AND ROAD SHOULDER; SUMMARY JUDGMENT;

Supreme Court, Erie County granted defendant Amherst Paving, Inc.'s motion for summary judgment dismissing the action as against it and the cross claims of defendant County of Erie against it; App. Div. dismissed the appeals from the Supreme Court order insofar as it dismissed defendant County's cross claims against defendant Amherst Paving, Inc., and otherwise affirmed.