

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
October 31 through November 6, 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.

BUFFALO CRUSHED STONE, INC. v TOWN OF CHEEKTOWAGA:

4TH Dept. App. Div. order of 10/3/08; modification and affirmance;

MUNICIPAL CORPORATIONS - ZONING - NONCONFORMING USE - MINING AND QUARRYING - WHETHER CERTAIN PARCELS OF LAND ARE ENTITLED TO NONCONFORMING USE STATUS;

Supreme Court, Erie County, among other things, declared that quarrying on subparcels 17C/25C and 12B/25I is a lawful nonconforming use; App. Div. modified by vacating the declaration in the last decretal paragraph with respect to the northern portion of parcel 31 and granting judgment in favor of plaintiff as follows: "It is ADJUDGED AND DECLARED that quarrying or mining is a permitted use on the northern portion of parcel 31," and by vacating the second decretal paragraph and granting judgment in favor of defendant as follows: "It is ADJUDGED AND DECLARED that quarrying or mining is not a lawful nonconforming use of subparcels 17C/25C and 12B/25I"; and affirmed as so modified.

FIRST HUDSON CAPITAL, LLC v SEABORN:

1ST Dept. App. Div. order of 8/5/08; reversal with dissents; leave to appeal granted by App. Div., 10/21/08; LANDLORD AND TENANT - RENT REGULATION - PROFITEERING BY RENT-STABILIZED TENANT - ROOMMATE OVERCHARGE - EVICTION AS A REMEDY FOR VIOLATION OF 9 NYCRR 2525.7(b) - LIABILITY FOR FAIR MARKET USE AND OCCUPANCY;

App. Term, 1ST Dept. affirmed a 6/20/05 Civil Court, New York County judgment that awarded possession to petitioner landlord in a summary holdover proceeding and modified a 7/29/05 Civil Court, New York County order that denied respondent's motion to vacate the warrant of eviction and granted petitioner's cross motion for a hearing to determine the fair market use and occupancy of the premises since the date of termination, to the extent of denying the cross motion and remanding the matter for further proceedings to determine the amount of use and occupancy due to petitioner, limited to the amount charged for the premises by petitioner plus additional amounts received by respondent as a result of the illegal roommate arrangements; App. Div. reversed, vacated the Civil Court orders, denied the petition and granted respondent's motion to vacate the warrant of eviction.

LACKAWANNA COMMUNITY DEVELOPMENT CORP., MATTER OF v KRAKOWSKI:

4TH Dept. App. Div. order of 4/25/08; reversal; leave to appeal granted by Court of Appeals, 10/21/08; TAXATION - EXEMPTIONS - TAXABLE OR TAX EXEMPT STATUS OF PROPERTY OWNED BY A TAX EXEMPT CHARITABLE LOCAL DEVELOPMENT CORPORATION AND LEASED TO A FOR-PROFIT MANUFACTURER AT A RENT THAT EXCEEDS THE OWNER'S CARRYING COSTS AND MAINTENANCE EXPENSES - RPTL 420-a; Supreme Court, Erie County granted petitioner's motion for summary judgment, denied respondents' cross motion for summary judgment declaring that the property is not tax exempt for the tax year 2006, annulled the challenged determination finding that the subject property was taxable property for the tax year 2006 and determined that the property was tax exempt for the tax year 2006; App. Div. reversed, denied the motion, granted the cross motion and dismissed the petition.

ROACHE, PEOPLE ex rel. v ALEXANDER &c., et al.:

3RD Dept. App. Div. corrected order of 9/4/08; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right and whether the order appealed from finally determines the proceeding within the meaning of the Constitution; HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION DENIAL OF MOTIONS FOR POOR PERSON RELIEF, TO REVOKE AN ORDER AND RELEASE PETITIONER ON RECOGNIZANCE OR BAIL AND TO PRECLUDE RESPONDENT FROM FILING OPPOSITION PAPERS AND FOR FURTHER RELIEF; App. Div. denied petitioner's motions for permission to proceed as poor person, to revoke an order and release petitioner on recognizance or bail, and to preclude respondent from filing opposition and for further relief.