

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**January 12 through January 18, 2007**

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.**

BRATTON (LARRY), PEOPLE v.:

Tompkins County Court order of 8/21/06; affirmance; leave to appeal granted by Kaye, Ch.J., 10/24/06;  
CRIMES AND CRIMINAL PROCEDURE - ARREST - WHETHER PAROLE OFFICERS, CLASSIFIED AS PEACE OFFICERS UNDER CPL 2.10(23), HAVE THE AUTHORITY TO MAKE WARRANTLESS ARRESTS OF PAROLEES FOR VIOLATIONS OF PAROLE COMMITTED IN THEIR PRESENCE - WHETHER PAROLE VIOLATION IS AN "OFFENSE" UNDER THE PENAL LAW; PAROLE;  
Ithaca City Court convicted defendant, after a nonjury trial, of resisting arrest and sentenced him to time served, concurrent with the parole violation time; County Court affirmed.

BROGGY et al. v. ROCKEFELLER GROUP, INC., et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/13/06; reversal; leave to appeal granted by Court of Appeals, 1/9/07;  
LABOR - SAFE PLACE TO WORK - WHETHER WINDOW-WASHER WAS ENGAGED IN ACTIVITY COVERED BY LABOR LAW § 240(1) WHEN HE FELL FROM A DESK WHILE CLEANING AN INTERIOR OFFICE WINDOW AT A COMMERCIAL BUILDING;

Supreme Court, New York County granted plaintiffs' motion for partial summary judgment on the issue of liability under Labor Law § 240(1), and granted defendants' motion dismissing the remaining claims under Labor Law §§ 200,202,241(6) and common law negligence; App. Div. reversed, denied plaintiffs' motion, granted defendants' motion for summary judgment on the Labor Law § 240(1) liability issue, and dismissed the complaint.

MARK (JOEL), PEOPLE v.:

1<sup>st</sup> Dept. App. Div. order of 10/3/06; affirmance; leave to appeal granted by Pigott, J., 12/27/06;

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WAIVER OF RIGHT TO RAISE ISSUES ON APPEAL - WHETHER WAIVER WAS KNOWING, INTELLIGENT AND VOLUNTARY - WHETHER TRIAL COURT ADEQUATELY EXPLAINED WAIVER OR ENSURED THAT DEFENDANT UNDERSTOOD THE RIGHT BEING WAIVED;

Supreme Court, Bronx County convicted defendant, upon his guilty plea, of burglary in the second degree and sentenced him to a determinate term of 3 1/2 years, followed by 3 1/2 years of post-release supervision; App. Div. affirmed.

PU (RICHARD), AN ATTORNEY:

1<sup>st</sup> Dept. App. Div. order of 12/12/06; grant of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - ALLEGED VIOLATION OF SUPREMACY CLAUSE AND DUE PROCESS RIGHTS;

App. Div. granted petition pursuant to 22 NYCRR 603.3 to the extent of suspending respondent from the practice of law in the State of New York for one year.

ROSARIO, et al. v. DIAGONAL REALTY, LLC, et al.:

1<sup>st</sup> Dept. App. Div. order of 9/19/06; affirmance; leave to appeal granted by App. Div., 12/21/06;

LANDLORD AND TENANT - RENT REGULATION - LANDLORD'S OBLIGATION TO ACCEPT SECTION 8 BENEFITS AS PART OF A RENT-STABILIZED TENANT'S LEASE - WHETHER LANDLORD HAS THE RIGHT UNDER FEDERAL AND STATE LAW TO OPT OUT OF THE SECTION 8 PROGRAM; INTERPLAY BETWEEN FEDERAL REQUIREMENTS REGARDING TERMINATION OF RENT-STABILIZED TENANCY (42 USC § 1437f), THE ANTI-DISCRIMINATION PROVISION OF THE J-51 TAX ABATEMENT LAW (ADMINISTRATIVE CODE OF CITY OF NY § 11-243[k]) AND THE RENT STABILIZATION CODE REQUIREMENT (9 NYCRR § 2522.5[g][1]) THAT A RENEWAL LEASE BE ON THE SAME TERMS AND CONDITIONS AS THE EXPIRED LEASE - PREEMPTION;

Supreme Court, New York County granted plaintiffs' consolidated motions for summary judgment and declared that with respect to plaintiffs, who are rent-stabilized tenants, defendants are obligated to continue accepting Section 8 rent subsidies and are not permitted to opt out of the Federal Section 8 rent subsidy program; App. Div. affirmed.

STROMAN, MATTER OF, v. CORNING:

4<sup>TH</sup> Dept. App. Div. order of 12/18/06; denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support the appeal taken as of right and whether the App. Div. order finally determines the proceeding within the meaning of the Constitution;  
PROCEEDING AGAINST BODY OR OFFICER - WHEN REMEDY AVAILABLE - APPELLATE DIVISION DENIAL OF MOTION TO COMMENCE CPLR ARTICLE 78 PROCEEDING AGAINST COUNTY COURT JUDGE;  
App. Div. denied petitioner's motion to commence an original CPLR article 78 proceeding as a poor person.