

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
February 9 through February 15, 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.

KELLY v. BERBERICH et al.:

1ST Dept. App. Div. order of 1/11/07; reversal with dissents;
Rule 500.11 review pending;

JUDGMENTS - SUMMARY JUDGMENT - LIABILITY OF DEFENDANT IN MOTOR VEHICLE ACCIDENT OCCURRING WHEN PLAINTIFF'S VEHICLE COLLIDED WITH A SHOPPING CART WHICH ROLLED ONTO THE HIGHWAY - CREATION OF DANGEROUS CONDITION - ACTUAL OR CONSTRUCTIVE NOTICE OF DANGEROUS CONDITION;

Supreme Court, New York County denied plaintiff's motion for summary judgment, and denied the motion of defendant Staples, Inc. for summary judgment dismissing the complaint and all cross claims against it; App. Div. reversed, granted defendant Staples, Inc.'s cross motion for summary judgment dismissing the complaint and all cross claims as against it, and dismissed the complaint and all cross claims as against defendant Staples, Inc.

SHERMAN v. SHERMAN:

2ND Dept. App. Div. order of 4/25/06; affirmance with dissents; sua sponte examination whether the dual dissent at the Appellate Division is on a question of law and whether the order appealed from finally determines the action within the meaning of the Constitution;

PARENT AND CHILD - SUPPORT - WHETHER INCREASE IN FATHER'S INCOME CONSTITUTED UNFORESEEN CHANGE IN CIRCUMSTANCES JUSTIFYING AN INCREASE IN CHILD SUPPORT PROVIDED FOR IN SEPARATION AGREEMENT INCORPORATED BUT NOT MERGED INTO JUDGMENT OF DIVORCE;

Supreme Court, Nassau County denied the branch of appellant's motion seeking an upward modification of child support and denied her application for attorneys' fees; App. Div. affirmed.