

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**March 23 through March 29, 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.**

ALDEN v ST. JOSEPH'S HOSPITAL HEALTH CENTER:

4<sup>TH</sup> Dept. App. Div. order of 2/2/07; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

NOTE OF ISSUE AND STATEMENT OF READINESS - WHETHER COURT PROPERLY GRANTED DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S NOTE OF ISSUE AND CERTIFICATE OF READINESS;

Supreme Court, Onondaga County granted defendant's motion to strike plaintiff's note of issue and certificate of readiness, granted defendant's motion to compel plaintiff to execute certain medical authorizations, ordered plaintiff to execute the medical record authorizations within seven days of the court's order, denied plaintiff's motion for the court to recuse itself, denied all other requests by plaintiff, including her request for summary judgment; App. Div. affirmed.

CONGREGATION YETEV LEV D'SATMAR, INC., et al., MATTER OF, v JACOB (JENO) (YAAKOV) KAHANA, et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/11/06; affirmance; leave to appeal granted by App. Div., 3/14/07;

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - PROCEEDING PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW § 618 TO, AMONG OTHER THINGS, DETERMINE THE VALIDITY OF THE ELECTION OF OFFICERS OF CONGREGATION YETEV LEV D'SATMAR, INC. - WHETHER THE VALIDITY OF AN ELECTION OF OFFICERS AND DIRECTORS OF A RELIGIOUS CORPORATION CAN BE DETERMINED THROUGH THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW WITHOUT REGARD TO MATTERS OF RELIGIOUS DOCTRINE; JUSTICIABILITY;

Supreme Court, Kings County dismissed the proceeding Matter in #2; App. Div. affirmed.

CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., et al. v CONGREGATION YETEV LEV D'SATMAR, INC., et al.:

2<sup>ND</sup> Dept. App. Div. order of 7/11/06; reversal; leave to appeal granted by App. Div., 3/14/07;

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DETERMINATION OF CLAIM TO REAL PROPERTY - ACTION TO QUIET TITLE - TRANSFER OF ONE-HALF INTEREST IN CEMETERY BY ONE CONGREGATION TO ANOTHER CONGREGATION - WHETHER APPELLATE DIVISION ERRED IN DETERMINING IT WAS PRECLUDED FROM DECIDING FACTUAL ISSUES SURROUNDING THE VALIDITY OF A RELIGIOUS CORPORATION'S REAL PROPERTY TRANSFER - RELIGIOUS CORPORATIONS LAW § 12;

Supreme Court, Orange County, on summary judgment, granted plaintiffs' application for nunc pro tunc approval of the transfer of an undivided one-half interest in the real property at issue, vacated all subsequent declarations filed which affect title to the property, denied the remaining claims and cross-claims, and dismissed from the action pursuant to CPLR 1003 claims against defendants UTS and UTA, App. Div. reversed, denied plaintiffs' motion for summary judgment and, upon searching the record, awarded summary judgment to defendants Congregation Yetev Lev D'Satmar, Inc., Kahan, Perlstein, Schoenfeld and Sander dismissing the complaint as against them, dismissed as academic the counterclaims asserted by those defendants and directed the Clerk of Orange County to cancel of record the January 19, 2001 deed at issue.

EDERER v GUTSKY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/5/06; affirmance; leave to appeal granted by App. Div., 3/20/07;

PARTNERSHIP - ACCOUNTING - WITHDRAWAL OF PARTNER - WHETHER PARTNERSHIP LAW § 26(b) EXEMPTED PARTNERS IN LIMITED LIABILITY PARTNERSHIP FROM INDIVIDUAL OBLIGATIONS TO ACCOUNT TO WITHDRAWING PARTNER UNDER EARLIER ENACTED AND UNAMENDED PARTNERSHIP LAW § 74; VALIDITY OF WITHDRAWAL AGREEMENT - WHETHER TERMS OF WITHDRAWAL AGREEMENT WERE UNREASONABLE OR ONEROUS, OR AGREEMENT WAS ENTERED UNDER DURESS;

Supreme Court, New York County, among other things, denied defendants' motion to dismiss the complaint, granted plaintiff's cross motion to the extent of dismissing defendants' counterclaims for fraud, unjust enrichment, and breach of contract, declared the withdrawal agreement dated June 26, 2003 to be valid and enforceable, granted so much of plaintiff's cross motion for summary judgment as was for an accounting against all defendants, and refused to rule in defendants' favor that goodwill should not be valued in the accounting; App. Div. affirmed.

HOSPITAL FOR JOINT DISEASES, &c. v TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY et al.:

2<sup>ND</sup> Dept. App. Div. order of 11/14/06; affirmance; leave to appeal granted by Court of Appeals, 3/22/07;  
INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - WAIVER - FAILURE TO TIMELY OBJECT TO THE ADEQUACY OF THE CLAIM FORMS OR TO SEEK VERIFICATION OF THE PURPORTED ASSIGNMENT OF CLAIM; SUMMARY JUDGMENT - WHETHER HOSPITAL ADEQUATELY ESTABLISHED THAT IT MAILED THE STATUTORILY PRESCRIBED BILLING FORMS TO THE INSURANCE COMPANY; STANDING;  
Supreme Court, Nassau County granted the plaintiff hospital's motion for summary judgment on the third cause of action, denied defendants' cross motion for summary judgment dismissing the complaint, and directed judgment in favor of the hospital against the insurance company in the amount of \$24,344.96 plus statutory no-fault interest and attorneys' fees pursuant to 11 NYCRR 65-4.6(e); App. Div. affirmed.

KIRKSEY (ALPHONSO), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/12/07; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;  
APPEALS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING MOTION TO FILE A SUPPLEMENTAL REPLY BRIEF;  
App. Div. denied motion by pro se appellant to serve and file a supplemental reply brief on an appeal from a judgment of the County Court, Orange County.

ORTEGA et al. v CITY OF NEW YORK:

2<sup>ND</sup> Dept. App. Div. order of 12/05/06; affirmance; leave to appeal granted by Court of Appeals, 3/22/07;  
TORTS - NEGLIGENCE - "THIRD-PARTY SPOILIATION" - WHETHER PLAINTIFFS MAY MAINTAIN CAUSE OF ACTION FOR THIRD-PARTY NEGLIGENT SPOILIATION OF EVIDENCE FOR INADVERTENT VIOLATION OF COURT ORDER TO PRESERVE A VEHICLE THAT MIGHT HAVE PROVIDED EVIDENCE ENABLING PLAINTIFFS TO PURSUE NEGLIGENCE CLAIMS AGAINST OTHER PARTIES;  
Supreme Court, Kings County denied plaintiffs' motion for summary judgment and, upon searching the record, granted the City of New York summary judgment dismissing Ortega's spoliation and contempt claims and plaintiff Peralta's contempt claim; App. Div.

affirmed and, upon searching the record, granted the City of New York summary judgment dismissing plaintiff Peralta's cause of action to recover damages for spoliation of evidence.

SERIO, et al., MATTER OF, v HEVESI:

1<sup>ST</sup> Dept. App. Div. order of 3/6/07; reversal with dissents; STATE - COMPTROLLER - AUDIT POWER - NEW YORK STATE INSURANCE DEPARTMENT LIQUIDATION BUREAU - OPERATIONS AND PROPERTY OF INSOLVENT INSURERS - QUASHING OF SUBPOENAS - NEW YORK STATE CONSTITUTION, ARTICLE V, § 1; STATE FINANCE LAW § 111; ABANDONED PROPERTY LAW § 1412-a;

Supreme Court, New York County granted petitioner's application to quash subpoenas dated March 23, 2004 and served by respondent on petitioners, quashed such subpoenas, denied respondent's counterclaim for an order directing petitioners to comply with remaining portions of the subpoenas, declared that article V, § 1 of the State Constitution, State Finance Law § 111 and the Abandoned Property Law § 1412-a do not empower the State Comptroller to pre-audit and post-audit the financial management and operations of all insolvent insurers operated by the State Insurance Department Liquidation Bureau and do not grant the Comptroller authority to audit all property of insolvent insurers held by the Superintendent of the State Department of Insurance; App. Div. reversed, reinstated the subpoenas and declared that respondent has the power to post-audit the Liquidation Bureau's financial management and operations and to audit property of distressed insurers held by the Superintendent of Insurance.

TEICHMAN, PEOPLE ex rel. v RIORDAN:

1<sup>ST</sup> Dept. App. Div. order of 1/18/07; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; APPEAL - ACADEMIC AND MOOT QUESTIONS - APPELLATE DIVISION DISMISSAL OF APPEAL AS MOOT; [HABEAS CORPUS]; Supreme Court, New York County denied application for writ of habeas corpus; App. Div. dismissed appeal as moot.

WHITE v CONTINENTAL CASUALTY COMPANY et al.:

4<sup>TH</sup> Dept. App. Div. order of 3/16/06; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; INSURANCE - DISABILITY INSURANCE - BREACH OF CONTRACT ACTION - SUMMARY JUDGMENT - WHETHER PLAINTIFF PHYSICIAN WAS "TOTALLY DISABLED" AS DEFINED UNDER DISABILITY INCOME POLICY; Supreme Court, Erie County granted co-defendants' separate motions for summary judgment dismissing plaintiff's complaint as against each of them, denied plaintiff's motion for summary judgment, and ordered that co-defendant Continental Casualty Company have forty days from entry of the court's order to submit its application for costs or such request would be deemed waived; App. Div. affirmed.