

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 30 through April 5, 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.

JOHNSON, MATTER OF, v NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION et al.:

1ST Dept. App. Div. order of 11/9/06; affirmance; leave to appeal granted by Court of Appeals, 3/27/07;

CIVIL SERVICE - TERMINATION OF EMPLOYMENT - WHETHER PETITIONER'S CONVICTION OF CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE THIRD DEGREE OPERATED AS A FORFEITURE OF HIS EMPLOYMENT WITH THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION PURSUANT TO NEW YORK CITY CHARTER § 1116(a);

Supreme Court, New York County granted the petition to the extent of annulling the respondents' determination that petitioner had forfeited his employment with the New York City Department of Environmental Protection (DEP), awarded petitioner back pay, ordered DEP to credit petitioner with the sick and annual leave he would have accrued, and denied the petition insofar as it sought petitioner's reinstatement to his former position at the same location; App. Div. affirmed.

KASHELKAR v STATE OF NEW YORK:

Court of Claims order of 2/9/07; dismissal; sua sponte examination whether a direct appeal lies as of right from the Court of Claims order dismissing the claim;
STATE - COURT OF CLAIMS - CHALLENGE TO COURT OF CLAIMS ORDER DISMISSING CLAIM FOR FAILING TO COMPLY WITH COURT OF CLAIMS ACT § 11(b);

Court of Claims granted defendant's motion to dismiss the claim, denied claimant's cross motion requesting discovery and sanctions, and dismissed the claim.

OLSON (BRIAN), PEOPLE v:

2ND Dept. App. Div. order of 12/26/06; affirmance; leave to appeal granted by Pigott, J., 3/19/07;
CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - SUFFICIENCY - JUSTIFICATION DEFENSE - USE OF PHYSICAL FORCE TO DEFEND SISTER BEING HARASSED BY GROUP OF MEN - VICTIM HIT WITH BEER BOTTLE; Supreme Court, Nassau County convicted defendant, after a nonjury trial, of assault in the first degree and criminal possession of a weapon in the fourth degree, and imposed sentence; App. Div. affirmed.

PROPERTY CLERK OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK v HARRIS et al.:

1ST Dept. App. Div. order of 11/2/06; reversal; leave to appeal granted by Court of Appeals, 3/29/07;
FORFEITURES AND PENALTIES - FORFEITURE OF PROCEEDS OR INSTRUMENTALITY OF CRIME - WHETHER CITY IS ENTITLED TO RETAIN POSSESSION OF A VEHICLE DURING PENDENCY OF FORFEITURE PROCEEDINGS WHERE VEHICLE IS JOINTLY OWNED BY TWO INDIVIDUALS AND ONE IS CHARGED WITH USING THE VEHICLE IN COMMISSION OF A CRIME AND THE OTHER IS AN INNOCENT CO-OWNER;
Supreme Court, New York County denied the petition, vacated the stay enjoining the release of the subject vehicle, dismissed the proceeding in its entirety, and directed the Property Clerk of the Police Department of the City of New York to release the vehicle to its half-owner; App. Div. reversed by granting the petition and annulling and vacating the determination of respondent New York City Office of Administrative Trials and Hearings which, after a post-seizure vehicle retention hearing, directed petitioners to release the subject vehicle to its co-owner.

SIMONE, et al. v HEIDELBERG, et al.:

Supreme Court, Richmond County order of 12/1/06, bringing up for review 2ND Dept. App. Div. order of 3/21/06; reversal; leave to appeal granted by Court of Appeals, 3/27/07;

EASEMENT - EXTINGUISHMENT OF EASEMENT - WHETHER AN EASEMENT EXTINGUISHED BY MERGER WHEN THE SUBJECT PROPERTIES CAME UNDER COMMON OWNERSHIP WAS RECREATED WHEN THE PROPERTIES WERE SEPARATELY SOLD AND THE EASEMENT WAS NOTED IN DEEDS CONVEYING THE DOMINANT ESTATE; WHETHER THE EASEMENT WAS ABANDONED; Supreme Court, Richmond County granted plaintiffs' motion for summary judgment, denied defendants' cross motion for summary judgment, declared plaintiffs the lawful owners of the disputed premises "free and clear" of a 1933 easement, cancelled the recorded easement, permanently enjoined defendants from using any part of plaintiffs' property, declared that defendants were forever barred from claiming a right to the disputed premises, and denied all other requested relief; App. Div. reversed by denying plaintiffs' motion for summary judgment, granting defendants' cross motion for summary judgment, and declaring the subject easement valid and enforceable by defendants and those acting on their behalf; Supreme Court ordered that defendants had withdrawn their demand for damages, punitive damages, and enforcement of the easement.

SUAREZ (SANTOS), PEOPLE v:

1ST Dept. App. Div. order of 3/27/07; sua sponte examination whether there are substantial grounds for the claim that the terms of this Court's remittitur have been violated; CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - REMITTITUR BY COURT OF APPEALS TO APPELLATE DIVISION - WHETHER APPELLATE DIVISION ORDER CONTRAVENES THE REMITTITUR OF THE COURT OF APPEALS; REMAND BY APPELLATE DIVISION TO SUPREME COURT FOR TRIAL ON CHARGE OF MANSLAUGHTER IN THE FIRST DEGREE - DOUBLE JEOPARDY CLAUSES OF FEDERAL AND STATE CONSTITUTIONS; App. Div. on remittitur from the Court of Appeals for consideration of an appropriate remedy, reversed the judgment of Supreme Court, Bronx County rendered January 30, 2002, convicting defendant after a jury trial of murder in the second degree and sentencing him to a term of 20 years to life, dismissed count two charging murder in the second degree, and remanded the matter for trial on the unresolved charge of manslaughter in the first degree.

WARD, et al., MATTER OF, v SPITZER:

3RD Dept. App. Div. order of 3/8/07; denial of motion; sua sponte examination whether the Appellate Division order finally determines the proceeding and whether any jurisdictional basis exists for an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - APPELLATE DIVISION DENIAL OF MOTION; PRISONS AND PRISONERS; App. Div. denied motion for a judgment in demand for uniformity of interpretation.

WILLIAMS, MATTER OF, (an attorney):

1ST Dept. App. Div. order of 7/27/06; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - SUSPENSION OF ATTORNEY PURSUANT TO DOCTRINE OF RECIPROCAL DISCIPLINE - PRIOR SUSPENSION OF ATTORNEY IN CONNECTICUT; DUE PROCESS;
App. Div. granted petition of the Departmental Disciplinary Committee, suspended respondent from the practice of law for six months, and denied respondent's cross motion to unseal the proceeding, compel the Committee to provide him with a statement of facts and set the matter down for a hearing.