

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 11 through May 17, 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.

BISHOP, et al. v MAURER, et al.:

1ST Dept. App. Div. order of 10/24/06; affirmance; leave to appeal granted by App. Div., 2/1/07; Rule 500.11 review pending; ATTORNEY AND CLIENT - LEGAL MALPRACTICE - RETAINER LETTER - POTENTIAL CONFLICT OF INTEREST IN LAW FIRM'S REPRESENTATION OF HUSBAND AND WIFE REGARDING HUSBAND'S INDIVIDUAL RETIREMENT ACCOUNT AND EMPLOYEE STOCK OPTION PLAN PROCEEDS; MOTION TO DISMISS CAUSES OF ACTION;

Supreme Court, New York County granted defendant Maurer's motion to dismiss to the extent of dismissing that portion of the first cause of action for constructive fraud, duress, breach of fiduciary duty and breach of trust, and the second, third, fourth and fifth causes of action, granted the motion of defendants Goodkind firm, Farber and Gallant to dismiss, dismissed the fourth, fifth and sixth causes of action, and ordered that the action shall continue based on the first cause of action against defendant Rona Maurer for undue influence; App. Div. affirmed.

DATA TREE, LLC, MATTER OF, v ROMAINE:

2ND Dept. App. Div. order of 1/23/07; affirmance; leave to appeal granted by Court of Appeals, 5/8/07;

DISCLOSURE - FREEDOM OF INFORMATION LAW - CPLR ARTICLE 78
PROCEEDING TO COMPEL THE SUFFOLK COUNTY CLERK TO PRODUCE CERTAIN DOCUMENTS PURSUANT TO THE FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW, ARTICLE 6) - WHETHER FOIL'S PRIVACY EXEMPTION APPLIED TO DOCUMENTS - WHETHER CORRECT BURDEN-SHIFTING ANALYSIS WAS APPLIED;

Supreme Court, Suffolk County granted petitioner's application for access to certain documents to the extent the documents are maintained and available in the Clerk's Office or on the internet; App. Div. affirmed.

FUNG et al. v JAPAN AIRLINES COMPANY, LTD., et al.:

2ND Dept. App. Div. order of 7/25/06; reversal; leave to appeal granted by Court of Appeals, 5/3/07;

WORKERS' COMPENSATION - EXCLUSIVENESS OF REMEDY - CONSOLIDATED PERSONAL INJURY ACTIONS - EMPLOYEE SLIP ON ICE IN PARKING LOT OWNED BY EMPLOYER - WHETHER EXCLUSIVITY PROVISIONS OF WORKERS' COMPENSATION LAW BAR PLAINTIFFS' ACTION AGAINST THE COMPANY (JAPAN AIRLINES MANAGEMENT CORP.) SERVING AS THE EMPLOYER'S "MANAGING AGENT" UNDER A LEASE; NEGLIGENCE - DUTY OF CARE - WHETHER SNOW REMOVAL COMPANY WHICH CONTRACTED WITH THE "MANAGING AGENT" ASSUMED A DUTY OF CARE TO THE EMPLOYEE; SUMMARY JUDGMENT - WHETHER TRIABLE ISSUES OF FACT WERE RAISED;

Supreme Court, Queens County denied that branch of defendant Japan Airlines Management Corp.'s motion which was for summary judgment dismissing the complaint and all cross claims against it in Action No. 1, and denied the motion by Aero Snow Removal Corp. for summary judgment dismissing the third-party complaint in Action No. 1 and the complaint in Action No. 2; App. Div. reversed, granted that branch of the motion of defendant Japan Airlines Management Corp. which was for summary judgment dismissing the complaint and all cross claims asserted against it in Action No. 1, granted the motions of defendant Aero Snow Removal Corp. for summary judgment dismissing the third-party complaint in Action No. 1 and the complaint in Action No. 2, dismissed the complaint in Action No. 1 as against Japan Airlines Management Corp., severed Action No. 1 against the remaining defendants, dismissed the third-party complaint, and dismissed the complaint in Action No. 2.

GUISHARD, et al. v GENERAL SECURITY INSURANCE COMPANY:

2ND Dept. App. Div. order of 8/29/06; affirmance; leave to appeal granted by Court of Appeals, 5/8/07; Rule 500.11 review pending;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER AN INJURY INCURRED IN THE COURSE OF CONVERTING A VAN TO AN ICE CREAM TRUCK ARISES OUT OF THE "OWNERSHIP, MAINTENANCE OR USE" OF THE VAN SUCH THAT THE AUTO EXCLUSION PROVISION APPLIED, RELIEVING THE INSURER OF ITS OBLIGATION TO DEFEND AND INDEMNIFY PLAINTIFFS IN AN UNDERLYING PERSONAL INJURY ACTION; INDEMNITY; SUMMARY JUDGMENT;

Supreme Court, Kings County granted judgment declaring that defendant is obligated to, and shall, indemnify and defend plaintiffs in the underlying personal injury action, that plaintiffs shall recover from defendant the total sum of \$3,044.92 as attorneys' fees, costs and disbursements in the underlying action plus costs and disbursements of this action; App. Div. affirmed.

GML, INC. et al. v CINQUE & CINQUE, PC et al.:

1ST Dept. App. Div. order of 12/7/06; affirmance; leave to appeal granted by App. Div., 5/10/07; Rule 500.11 review pending; LIMITATION OF ACTIONS - WHAT STATUTE GOVERNS - LEGAL MALPRACTICE - CPLR § 202 - WHETHER TOLLING PROVISIONS OF TENNESSEE STATUTE ARE UNAVAILABLE TO PLAINTIFFS EVEN WHERE "DEFENDANTS HAVE NOT DEVELOPED SUFFICIENT CONTACTS WITH THE FOREIGN STATE FOR ITS COURTS TO BE CAPABLE OF ASSERTING PERSONAL JURISDICTION OVER THEM"; ALLEGED UNCONSTITUTIONALITY OF TOLLING PROVISIONS EMBODIED IN CPLR § 202 AS APPLIED TO PLAINTIFFS; Supreme Court, New York County granted defendants' motion for summary judgment seeking to dismiss the complaint, and dismissed the complaint; App. Div. affirmed.

LEON (JOSE), PEOPLE v.:

1ST Dept. App. Div. order of 1/25/07; affirmance; leave to appeal granted by Pigott, J., 5/3/07; CRIMES AND CRIMINAL PROCEDURE - RIGHT OF CONFRONTATION - WHETHER A FINGERPRINT COMPARISON DOCUMENT IS INADMISSIBLE UNDER CRAWFORD v WASHINGTON (541 US 36 [2004]) AT A DEFENDANT'S PREDICATE FELONY HEARING; Supreme Court, New York County convicted defendant, after a jury trial, of sexual abuse in the first degree (three counts) and endangering the welfare of a child, and sentenced defendant as a persistent violent felony offender; App. Div. affirmed.

RAWLINS (MICHAEL), PEOPLE v.:

1ST Dept. App. Div. order of 2/6/07; affirmance; leave to appeal granted by Graffeo, J., 5/3/07; CRIMES AND CRIMINAL PROCEDURE - RIGHT OF CONFRONTATION - WHETHER FINGERPRINT COMPARISON REPORTS ADMITTED INTO EVIDENCE UNDER THE BUSINESS RECORDS EXCEPTION WERE TESTIMONIAL SUCH THAT THEIR ADMISSION VIOLATED DEFENDANT'S RIGHT OF CONFRONTATION; Supreme Court, New York County convicted defendant, after a jury trial, of six counts of burglary in the third degree, and imposed sentence; App. Div. affirmed.

CITY OF UTICA, MATTER OF, v TOWN OF FRANKFORT et al.:

4TH Dept. App. Div. order of 2/2/07 and judgment of 11/17/06; leave to appeal granted by Court of Appeals, 5/3/07; MUNICIPAL CORPORATIONS - ANNEXATION OF TERRITORY - GENERAL MUNICIPAL LAW ARTICLE 17 - WHETHER THE APPELLATE DIVISION PROPERLY CONCLUDED THAT A PROPOSED ANNEXATION OF LAND FROM HERKIMER COUNTY AND THE TOWN OF FRANKFORT TO THE CITY OF UTICA WAS IN THE OVERALL PUBLIC INTEREST, OR ERRED BY DISPENSING WITH THE SPECIAL ELECTION REQUIREMENT OF GENERAL MUNICIPAL LAW § 713;

App. Div. confirmed a referee's report recommending that the App. Div. approve the annexation of 225 acres of property located in the Town of Frankfort to the City of Utica (Utica), granted Utica's petition seeking annexation of the property, and adjudged that the proposed annexation was in the overall public interest, and subsequently granted Utica's cross motion to the extent of dispensing with the requirement of a special election for approval of the proposed annexation.

WEINSTEIN et al., MATTER OF, v CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT et al.:

2ND Dept. App. Div. order of 4/17/07; confirmed determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - WHETHER MISSING PORTION OF HEARING TRANSCRIPT WARRANTED ANNULMENT OF ADMINISTRATIVE DETERMINATION; SUBSTANTIAL EVIDENCE - WHETHER ADMINISTRATIVE DETERMINATION SUPPORTED BY SUBSTANTIAL EVIDENCE; ALLEGED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS; App. Div. confirmed determination of the City of New York Department of Housing Preservation and Development dated March 23, 2005, which after a hearing, granted the application of Cadman Towers, Inc., for a certificate authorizing it to proceed with a proceeding to evict petitioners, denied the petition, and dismissed the proceeding.

YARBOROUGH v CITY OF NEW YORK:

2ND Dept. App. Div. order of 4/18/06; reversal; leave to appeal granted by Court of Appeals, 5/8/07; MUNICIPAL CORPORATIONS - NOTICE OF STREET DEFECT - SUMMARY JUDGMENT - TRIABLE ISSUE OF FACT - PERSONAL INJURY ALLEGEDLY CAUSED BY POTHOLE IN STREET - CITY'S ALLEGED AFFIRMATIVE CREATION OF A DANGEROUS CONDITION AS AN EXCEPTION TO THE CITY'S PRIOR WRITTEN NOTICE REQUIREMENT UNDER ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 7-201(c)(2) - WHETHER PLAINTIFF WAS REQUIRED TO SUBMIT EVIDENCE THAT CITY'S REPAIR OF POTHOLE IMMEDIATELY RESULTED IN A DANGEROUS CONDITION; Supreme Court, Kings County denied the City's motion for summary judgment seeking to dismiss the complaint insofar as asserted against it; App. Div. reversed by granting the defendant City's motion, dismissing the complaint insofar as asserted against it, and severing the action against the remaining defendant.