

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
June 8 through June 14, 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.

DANIELSON (KHALIL), PEOPLE v:

1ST Dept. App. Div. order of 3/27/07; affirmance with dissent; leave to appeal granted by Mazzairelli, J., 5/31/07;
CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - APPELLATE REVIEW - WHETHER THE APPELLATE DIVISION'S WEIGHT OF THE EVIDENCE REVIEW IN A DEPRAVED INDIFFERENCE MURDER CASE IS LIMITED TO THE ARGUMENTS RAISED BY DEFENDANT IN HIS BRIEF TO THAT COURT; EVIDENCE - WHETHER EVIDENCE OF DEPRAVED INDIFFERENCE MURDER WAS LEGALLY SUFFICIENT OR AGAINST THE WEIGHT OF THE EVIDENCE; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED INEFFECTIVE REPRESENTATION OF TRIAL COUNSEL IN FAILING TO PRESERVE LEGAL SUFFICIENCY ISSUE;
Supreme Court, Bronx County convicted defendant, after a jury trial, of murder in the second degree, and imposed sentence; App. Div. affirmed.

9TH & 10TH STREET, LLC, MATTER OF, v BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW YORK:

1ST Dept. App. Div. order of 5/29/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution; MUNICIPAL CORPORATIONS - ZONING - BUILDING PERMIT - WHETHER THE DEPARTMENT OF BUILDINGS' DENIAL OF A BUILDING PERMIT TO PETITIONER ON THE GROUNDS THAT PETITIONER COULD NOT PRODUCE DOCUMENTATION OF EVENTUAL INSTITUTIONAL CONTROL OVER A PROPOSED DORMITORY BUILDING CONSTITUTED AN IMPERMISSIBLE ADMINISTRATIVE ANTICIPATORY PUNISHMENT;

Supreme Court, New York County denied the article 78 petition seeking to annul respondent's determination that upheld an objection of the Department of Buildings to petitioner's proposed building; App. Div. reversed, granted the petition to the extent of annulling the determination and remanded the matter for further administrative action.

RIVERSIDE SYNDICATE, INC. v MUNROE et al.:

1ST Dept. App. Div. order of 4/5/07; reversal; leave to appeal granted by App. Div., 5/29/07;

LANDLORD AND TENANT - RENT REGULATION - WHETHER COURT-APPROVED STIPULATION OF SETTLEMENT BETWEEN LANDLORD AND TENANTS IN 1996 SUMMARY PROCEEDING VIOLATES RENT STABILIZATION CODE (9 NYCRR) § 2520.13 AND MAY BE DECLARED NULL AND VOID AS AGAINST PUBLIC POLICY; ESTOPPEL - WAIVER;

Supreme Court, New York County denied plaintiff's motion for summary judgment in its entirety, granted defendants' cross motion for summary judgment dismissing the complaint, and directed the court clerk to enter judgment dismissing the complaint; App. Div. reversed, granted plaintiff landlord's motion to the extent of declaring the stipulation of settlement executed by the parties as of March 29, 1996, and "so ordered" by the Civil Court, New York County on May 3, 1996, is null and void on the ground that it violates Rent Stabilization Code (9 NYCRR) § 2520.13 and is contrary to public policy, and denied defendant tenants' cross motion.

SCHWARTZ, MATTER OF, v DENNISON:

1ST Dept. App. Div. order of 5/1/07; dismissal of appeal as moot; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; APPEAL - ACADEMIC AND MOOT QUESTIONS - WHETHER, AFTER DISMISSING RESPONDENT'S APPEAL AS MOOT, THE APPELLATE DIVISION PROPERLY VACATED THE SUPREME COURT JUDGMENT ANNULLING A DENIAL OF PAROLE RELEASE DETERMINATION AND DISMISSED PETITIONER'S ARTICLE 78 PROCEEDING BECAUSE VENUE FOR THE PROCEEDING WAS IMPROPERLY LAID AND THE PETITION SHOULD NOT HAVE BEEN GRANTED;

Supreme Court, New York County granted the petition annulling the denial of parole and remanding for a de novo hearing before a new panel, and denied respondent's motion to change venue; App. Div. dismissed respondent's appeal as moot, vacated the judgment granting the petition, and dismissed the proceeding.