

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
June 22 through June 28, 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.

HALL (AZIM), PEOPLE v.:

1ST Dept. App. Div. order of 2/6/07; reversal; leave to appeal granted by Smith, J., 6/22/07;

CRIMES AND CRIMINAL PROCEDURE - SUPPRESSION HEARING - BODY CAVITY SEARCH INCIDENT TO ARREST CONDUCTED AT THE POLICE STATION - WHETHER THE SEARCH VIOLATED THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION;

Supreme Court, New York County (in two orders) granted defendant's motion to the extent of suppressing the physical evidence seized from him at the time of his arrest, and dismissed the indictment; App. Div. reversed both orders, denied defendant's motion to suppress physical evidence, and reinstated the indictment.

HENNEBERRY, MATTER OF, v ING CAPITAL ADVISERS, LLC, et al.:

1ST Dept. App. Div. order of 2/22/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ARBITRATION - POWERS OF ARBITRATOR - WHETHER PETITIONER WAS DENIED DUE PROCESS WHERE ARBITRATOR PLACED BURDEN OF PROOF ON RESPONDENTS DURING THE PROCEEDING, BUT REVERSED THE RULING IN HIS WRITTEN DECISION AND SHIFTED THE BURDEN TO PETITIONER; Supreme Court, New York County denied the petition to vacate an arbitration award and granted the cross petition to confirm the award; App. Div. affirmed.

NUSSENZWEIG v PHILIP-LORCA DICORCIA, et al.:

1ST Dept. App. Div. order of 3/20/07; affirmance; leave to appeal granted by App. Div., 6/19/07; LIMITATION OF ACTIONS - WHEN CAUSE OF ACTION UNDER STATE'S PRIVACY STATUTE (CIVIL RIGHTS LAW §§ 50,51) CONCERNING USE OF PLAINTIFF'S LIKENESS IN A WORK OF ART ACCRUES; APPEAL - MATTERS REVIEWABLE - ALLEGED ERROR IN APPELLATE DIVISION'S FAILURE TO REACH ISSUE WHETHER DEFENDANTS' USE OF PLAINTIFF'S PHOTOGRAPH WAS ENTITLED TO FIRST AMENDMENT PROTECTION WHERE COURT DETERMINED THAT THE ACTION WAS BARRED BY STATUTE OF LIMITATIONS; CIVIL RIGHTS - COMMERCIAL USE OF PHOTOGRAPH - WHETHER USE OF INDIVIDUAL'S LIKENESS IN A WORK OF ART IS SUBJECT TO AN ACTION UNDER STATE'S PRIVACY STATUTE; Supreme Court, New York County, among other things, granted motion and cross motion of defendants Philip-Lorca diCorcia and Pace/MacGill, Inc. for summary judgment dismissing the complaint; App. Div. affirmed.

OSTER, et al. v STATE OF NEW YORK, et al.:

Supreme Court, New York County order of 4/27/07; dismissal of complaint as against State of New York; sua sponte examination whether the order finally determines the action within the meaning of the Constitution, whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2), and whether simultaneous appeals may be taken to the Court of Appeals and Appellate Division; LANDLORD AND TENANT - RENT REGULATION - SUMMARY PERSONAL USE HOLDOVER PROCEEDINGS AGAINST TENANTS IN RENT-STABILIZED APARTMENTS - TENANTS ALLEGE THAT THE PHRASE "ONE OR MORE" IN RENT STABILIZATION LAW § 26-511(c)(9)(b) AND THE PHRASE "A HOUSING ACCOMMODATION" IN THE RENT STABILIZATION CODE ARE SO VAGUE AND AMBIGUOUS ON THEIR FACE AS TO VIOLATE TENANTS' RIGHT TO DUE PROCESS; Supreme Court, New York County dismissed the complaint as against the State of New York, dismissed the first five causes of action in their entirety, and declared the phrase "one or more" in Rent Stabilization Law § 26-511(c)(9)(b) and the phrase "a housing accommodation" in Rent Stabilization Code § 2524.4 are not unconstitutionally vague.

TABAK, et al. v STEELE:

1ST Dept. App. Div. order of 3/8/07; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
LANDLORD AND TENANT - SUMMARY PROCEEDINGS - NONPRIMARY RESIDENCE HOLDOVER PROCEEDING - WHETHER LANDLORDS ESTABLISHED AT TRIAL THAT TENANT DID NOT PRIMARY RESIDE AT THE SUBJECT APARTMENT;
Civil Court, New York County, after a nonjury trial, dismissed landlords' petition in a nonprimary residence holdover proceeding; App. Term affirmed; App. Div. reversed, vacated the Civil Court judgment, and granted the petition.