

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 6 through July 12, 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.

APPLETON ACQUISITION, LLC, et al. v THE NATIONAL HOUSING PARTNERSHIP, et al.:

1ST Dept. App. Div. order of 11/21/06; reversal; leave to appeal granted by Court of Appeals, 6/27/07;
PARTNERSHIP - LIMITED PARTNERSHIP - WHETHER A DISSENTING LIMITED PARTNER'S ACTION FOR RESCISSION OF A MERGER TRANSACTION ON THE GROUNDS OF FRAUD AND MISREPRESENTATION, AND FOR DAMAGES ARISING FROM THE GENERAL PARTNER'S BREACH OF FIDUCIARY DUTIES IN EFFECTING THE MERGER, IS BARRED BY PARTNERSHIP LAW § 121-1102(d); Supreme Court, New York County denied defendants' motion to dismiss pursuant to CPLR 3211; App. Div. reversed, granted defendants' motion to dismiss, and dismissed the complaint.

ACCOUNTING BY FLEET BANK, AS TRUSTEE OF THE TRUST FOR THE BENEFIT OF BARBARA W. PIEL, &c., MATTER OF:

4TH Dept. App. Div. orders of 3/16/07; reversal; leave to appeal granted by Court of Appeals, 6/28/07;

DESCENT AND DISTRIBUTION - RIGHTS OF INHERITANCE - EFFECT OF ADOPTION - WHETHER SURROGATE ERRED IN DETERMINING THAT, BECAUSE BENEFICIARY'S OUT-OF-WEDLOCK CHILD WAS ADOPTED OUT OF FAMILY, SHE WAS NOT "DESCENDANT" OR "CHILD" OF BENEFICIARY AND WAS NOT INCLUDED WITHIN CLASS OF INTENDED REMAINDERPERSONS OR BENEFICIARIES OF TRUSTS ESTABLISHED BEFORE DOMESTIC RELATIONS LAW § 117 WAS AMENDED TO LIMIT RIGHT OF ADOPTED-OUT CHILD TO INHERIT ONLY FROM AND THROUGH ADOPTIVE PARENTS;

Surrogate's Court, Monroe County settled the final account of trusts established in 1926 and 1963; App. Div. reversed the decrees and remitted to Surrogate's Court for further proceedings.

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA v HSBC BANK USA:

1ST Dept. App. Div. order of 2/15/07; modification; leave to appeal granted by App. Div., 6/26/07;

BONDS - ACTION TO RECOVER SUMS PAID PURSUANT TO BOND GUARANTEEING PAYMENT OF TAX RECEIPTS OF CIGARETTE WHOLESALER TO STATE OF NEW YORK - WHETHER CLAIMS OF BONDING COMPANY AGAINST BANK WHERE TAX RECEIPTS WERE DEPOSITED ARE BARRED BY RES JUDICATA AS A RESULT OF PROCEEDINGS IN BANKRUPTCY CASE OF CIGARETTE WHOLESALER; SUMMARY JUDGMENT;

Supreme Court, New York County, among other things, granted plaintiff's motion for summary judgment as to liability and denied defendant's motion for summary judgment dismissing the complaint; App. Div. modified, granted that aspect of defendant's motion which sought summary judgment dismissing the fifth cause of action, and dismissed that cause of action.

P.A. BUILDING COMPANY v CITY OF NEW YORK:

1ST Dept. App. Div. order of 1/25/07; affirmance; leave to appeal granted by Court of Appeals, 6/28/07;

LANDLORD AND TENANT - LEASE - RENT ESCALATION CLAUSE - WHETHER LANDLORD PROPERLY PASSED TO TENANT CITY A SHARE OF THE ASBESTOS REMOVAL COST AS AN OPERATING EXPENSE; WAIVER OF ARGUMENT; INTEREST ACCRUAL;

Supreme Court, New York County awarded plaintiff damages in the total sum of \$1,312,960.26; App. Div affirmed.

TOWN OF RYE et al., MATTER OF, v NEW YORK STATE BOARD OF REAL PROPERTY SERVICES, et al.:

2ND Dept. App. Div. order of 2/20/07; leave to appeal granted by Court of Appeals, 6/28/07;

TAXATION - REAL PROPERTY TAX - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE DETERMINATION OF NEW YORK STATE BOARD OF REAL PROPERTY SERVICES THAT DENIED TOWN OF RYE'S APPLICATION FOR A SEGMENT SPECIAL EQUALIZATION RATE FOR SCHOOL TAX APPORTIONMENT IN THE PART OF THE CITY OF RYE LOCATED WITHIN THE RYE NECK UNION FREE SCHOOL DISTRICT; DISMISSAL OF PROCEEDING BASED ON PETITIONERS' "LACK OF CAPACITY"; STANDING;

App. Div. granted that branch of the motion by respondent New York State Board of Real Property Services and the motion by respondent City of Rye to dismiss the proceeding.

RAO &c., MATTER OF, v FIORILLO &c.:

Supreme Court, Nassau County order of 6/21/07; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2) and whether the matter is moot;

MENTAL HEALTH - COURT AUTHORIZATION OF MEDICAL TREATMENT - GUARDIAN'S CHALLENGE TO PROCEDURE AT HEARING;

Supreme Court, Nassau County granted petitioner's application to the extent provided in the order, authorized petitioner Nassau University Medical Center, its physicians and staff to administer certain antipsychotic and other medications to Catherine Fiorillo.

SPENCER, MATTER OF, v SPENCER:

3RD Dept. App. Div. order of 12/14/06; affirmance; leave to appeal granted by Court of Appeals, 7/2/07;

PARENT AND CHILD - SUPPORT - WHETHER FAMILY COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT A NEW SUPPORT ORDER DIRECTING RESPONDENT PAY CHILD SUPPORT UNTIL SON REACHED THE AGE OF 21 WHERE PRIOR CONNECTICUT JUDGMENT DIRECTED CHILD SUPPORT ONLY UNTIL SON REACHED AGE OF 18 (FEDERAL FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT; UNIFORM INTERSTATE FAMILY SUPPORT ACT); ATTORNEYS' FEES - WHETHER FAMILY COURT PROPERLY GRANTED PETITIONER ATTORNEYS' FEES;

Family Court, Albany County granted petitioner's application, in a proceeding pursuant to Family Court Act article 4, to direct respondent to pay child support and awarded petitioner attorneys' fees; App. Div. affirmed.

URBAEZ (MARCOS), PEOPLE v:

1ST Dept. App. Term order of 1/31/07; affirmance; leave to appeal granted by Smith, J., 6/28/07;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO JURY TRIAL - ALLEGED DUE PROCESS VIOLATION WHERE CHARGE AGAINST DEFENDANT WAS REDUCED FROM AGGRAVATED HARASSMENT IN THE SECOND DEGREE TO ATTEMPTED AGGRAVATED HARASSMENT IN THE SECOND DEGREE TO AVOID A JURY TRIAL; Supreme Court, Bronx County convicted defendant, after a non-jury trial, of attempted aggravated harassment in the second degree and harassment in the second degree, and imposed sentence; App. Term affirmed.

WHITE (GARY), PEOPLE v:

2ND Dept. App. Div. order of 5/1/07; affirmance; leave to appeal granted by Graffeo, J., 6/28/07;

CRIMES AND CRIMINAL PROCEDURE - CONFESSION - WHETHER, IN THE ABSENCE OF AN INCRIMINATING PRE-MIRANDA STATEMENT BY DEFENDANT, THERE WAS A NEED TO DETERMINE WHETHER PRE- AND POST-MIRANDA SESSIONS WERE PART OF A "SINGLE CONTINUOUS CHAIN OF EVENTS" IN DECIDING WHETHER SUPPRESSION OF DEFENDANT'S CONFESSION TO POLICE WAS WARRANTED;

Supreme Court, Kings County convicted defendant of murder in the second degree, and imposed sentence; App. Div. affirmed.