

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 20 through July 26, 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.

ADAMS, MATTER OF, v ROCHESTER FIRE DEPARTMENT:

4TH Dept. App. Div. orders of 4/30/07 and 6/20/07; denial of poor person relief; sua sponte examination whether the orders appealed from finally determine the proceeding within the meaning of the Constitution, whether any basis exists for an appeal as of right and whether the appeal was timely taken;

APPEALS - CHALLENGE TO APPELLATE DIVISION ORDERS DENYING MOTION TO PROCEED AS A POOR PERSON ON AN APPEAL AND DENYING MOTION FOR RENEWAL OF THAT MOTION; MOTIONS - DENIAL BY SUPREME COURT OF MOTION SEEKING TO COMPEL COMPLIANCE WITH A SUBPOENA PURSUANT TO CPLR 2308;

Supreme Court, Orleans County dismissed petitioner's motion seeking to compel compliance with a subpoena pursuant to CPLR 2308; App. Div. denied motion, and thereafter denied motion to renew.

ARAUJO, et al. v TIANO'S CONSTRUCTION CORPORATION et al.:

1ST Dept. App. Div. order of 5/24/07; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

LABOR - PREVAILING RATE OF WAGES - SUMMARY JUDGMENT - WHETHER COURT PROPERLY DISMISSED PLAINTIFFS' CAUSES OF ACTION AGAINST THEIR EMPLOYER AND ITS SURETY FOR BREACH OF CONTRACT, QUANTUM MERUIT AND UNJUST ENRICHMENT, BASED ON THEIR CLAIMS THAT THEY WERE PAID LESS THAN THE MINIMUM PREVAILING WAGES SET PURSUANT TO THE DAVIS-BACON ACT. DETERMINATION THAT NO PRIVATE RIGHT OF ACTION EXISTS, EITHER DIRECTLY OR INDIRECTLY, TO ENFORCE CONTRACTS REQUIRING PAYMENT OF FEDERAL PREVAILING WAGE SCHEDULES; Supreme Court, New York County granted motion by defendants Lumbermans Mutual Casualty Company and Tiano's Construction, Corp. to extent of awarding summary judgment to those defendants dismissing the first amended complaint against them, and severed the remaining claims; App. Div. affirmed.

CAMPOS v THE CITY OF NEW YORK:

1ST Dept. App. Div. order of 8/17/06; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPAL CORPORATIONS - TORT LIABILITY - POLICE - WHETHER APPELLATE DIVISION ERRED IN GRANTING CITY'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT TO EXTENT OF DISMISSING THE CAUSES OF ACTION AGAINST THE CITY FOR USE OF EXCESSIVE FORCE AND NEGLIGENT TRAINING WHERE PLAINTIFF WAS SHOT AND ARRESTED BY AN OFF-DUTY POLICE OFFICER; ALLEGED DENIAL OF RIGHT TO JURY TRIAL; Supreme Court, New York County awarded plaintiff, after a jury trial, \$16,516,219 for bodily personal injuries and \$500,000 for malicious prosecution; App. Div. modified, granted defendant's motion for judgment notwithstanding the verdict to the extent of dismissing the causes of action against the City for use of excessive force and for negligent training, vacated the award for bodily personal injuries based on those causes of action, and otherwise affirmed.

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE TROOPERS, INC., et al. v NEW YORK STATE DIVISION OF STATE POLICE et al.:

3RD Dept. App. Div. order of 5/24/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; COURTS - JUSTICIABLE QUESTIONS - WHETHER PLAINTIFFS' CHALLENGE TO THE CONSTITUTIONALITY AND LEGALITY OF AN UNWRITTEN POLICY OF THE STATE POLICE THAT MANDATES MEMBERS TO EITHER SIGN RELEASES DISCLOSING THEIR CONFIDENTIAL MEDICAL INFORMATION OR BE SUBJECT TO DISCIPLINARY ACTION PRESENTED A JUSTICIABLE CONTROVERSY; Supreme Court, Albany County denied plaintiffs' motion for summary judgment, and granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

333 EAST 49TH ASSOCIATES, LP, et al., MATTER OF, v NEW YORK STATE
DIVISION OF HOUSING and COMMUNITY RENEWAL, OFFICE OF RENT
ADMINISTRATION:

1ST Dept. App. Div. order of 5/29/07; affirmance with dissents;
Rule 500.11 review pending;

LANDLORD AND TENANT - RENT REGULATION - WHETHER DIVISION OF
HOUSING AND COMMUNITY RENEWAL (DHCR) RATIONALLY CONCLUDED THAT
PETITIONER'S FAILURE TO KEEP SIX COMPACTOR ROOMS CLEAN IN A 13-
STORY RESIDENTIAL BUILDING CONSTITUTED A FAILURE TO MAINTAIN
JANITORIAL SERVICES WARRANTING A RENT REDUCTION ON THE GROUND OF
REDUCTION IN SERVICES;

Supreme Court, New York County denied the petition to annual
respondent's order for rent reduction on the ground of a
reduction of services; App. Div. affirmed.