

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 10 through August 16, 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.

CELLUTECH, INC., et al. v WATERTOWN INDUSTRIAL CENTER LOCAL DEVELOPMENT CORP., et al.:

4TH Dept. App. Div. order of 7/6/07; modification; sua sponte examination whether an appeal as of right lies pursuant to CPLR 5601(c);

LANDLORD AND TENANT - LEASE - ACTION BY TENANT SEEKING COMPENSATION FOR DAMAGES FROM FIRE THAT DESTROYED BUILDING AND CONTENTS - DUTY TO MAINTAIN SPRINKLER SYSTEM; CONSTRUCTION OF LEASE PROVISIONS; BREACH OF CONTRACT; NEGLIGENCE; DISMISSAL OF COMPLAINT AFTER JURY VERDICT OF NO CAUSE OF ACTION; NEW TRIAL GRANTED ON DAMAGES BY APPELLATE DIVISION;

Supreme Court, Jefferson County, upon a jury verdict of no cause of action, dismissed the complaint, amended complaint and counterclaims; App. Div. modified by granting plaintiffs' posttrial motion in part, setting aside the verdict in part, reinstating the breach of contract causes of action and the negligence cause of action and claim against defendant Watertown Industrial Center Local Development Corporation, granting plaintiffs judgment on liability on the breach of contract causes of action and negligence cause of action and claim, and granted a new trial on damages on the breach of contract causes of action, on comparative negligence and on the negligence cause of action and claim.

JONES, MATTER OF, v KEENAN, et al.:

4TH Dept. App. Div. order of 6/26/07; dismissed CPLR article 78 proceeding; sua sponte examination whether there is a substantial constitutional question directly involved to support an appeal as of right, whether there is any jurisdictional basis for an appeal as of right, and whether the notice of appeal dated June 28, 2007 is sufficient notice that an appeal has been taken to the Court of Appeals from an order of the App. Div., Fourth Dept.; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING AGAINST JUDGE AND DISTRICT ATTORNEY - PROCEEDING DISMISSED BY APPELLATE DIVISION;

App. Div. granted respondent Green's motion to dismiss the CPLR article 78 proceeding, dismissed the proceeding, and dismissed petitioner's cross motion for an extension of time to file and serve a brief.

KOEHL v MIRZA, et al.:

3RD Dept. App. Div. order of 4/26/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - ACTION AGAINST EMPLOYEES OF THE DEPARTMENT OF CORRECTIONAL SERVICES INCLUDING CLAIM THAT PRISON DENTISTS FAILED TO PROVIDE PLAINTIFF WITH ADEQUATE DENTAL CARE - DISMISSAL OF COMPLAINT ON GROUND THAT ACTION MUST BE COMMENCED IN COURT OF CLAIMS (CORRECTION LAW § 24[1]) - APPELLANT CHALLENGES DISMISSAL OF FEDERAL CIVIL RIGHTS CLAIMS;

Supreme Court, Clinton County granted defendants' motion to dismiss the complaint; App. Div. affirmed.

LINGLE (JOHN), PEOPLE v:

1ST Dept. App. Div. order of 11/14/06; affirmance; leave to appeal granted by Graffeo, J., 8/7/07; CRIMES AND CRIMINAL PROCEDURE - SENTENCE - WHETHER TRIAL COURT'S FAILURE TO PRONOUNCE IN OPEN COURT A PERIOD OF POST-RELEASE SUPERVISION AS PART OF THE SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE SENTENCE INVALID - WRITTEN NOTATION REGARDING POST-RELEASE SUPERVISION IN COURT CLERK'S FILE; CLAIMED ERROR IN TRIAL COURT'S REFUSAL TO CHARGE THIRD DEGREE ARSON AS A LESSER INCLUDED OFFENSE OF SECOND DEGREE ARSON; DENIAL BY TRIAL COURT OF DEFENSE REQUEST FOR EMERGENCY CPL 730 PSYCHIATRIC EXAMINATION OF DEFENDANT;

Supreme Court, New York County convicted defendant, after a jury trial, of arson in the second degree and reckless endangerment in the first degree, and sentenced him, as a second felony offender, to concurrent terms of 14 years and 3 1/2 to 7 years, respectively; App. Div. affirmed.

SPARBER (DANIEL), PEOPLE v:

1ST Dept. App. Div. order of 11/9/06; affirmance; leave to appeal granted by Ciparick, J., 8/9/07;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - WHETHER TRIAL COURT'S FAILURE TO MENTION A PERIOD OF POST-RELEASE SUPERVISION AS PART OF THE SENTENCE RENDERS THE POST-RELEASE SUPERVISION COMPONENT OF THE SENTENCE INVALID - COURT CLERK'S WRITTEN NOTATION REGARDING POST-RELEASE SUPERVISION ON COMMITMENT PAPERS;

Supreme Court, New York County convicted defendant, on his guilty plea, of assault in the first degree and sentenced him, as a second violent felony offender, to a term of 15 years; App. Div. affirmed.

ZIPPER et al. v HAROLDON COURT CONDOMINIUM, et al.:

1ST Dept. App. Div. order of 4/17/07; reversal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as right and whether the appeal was timely taken;

LANDLORD AND TENANT - RENT REGULATION - EVICTION OF RENT-STABILIZED TENANT ON THE GROUND OF NUISANCE - NOXIOUS ODORS IN APARTMENT - TESTIMONY OF DISINTERESTED WITNESSES (FIREFIGHTERS); Supreme Court, New York County, after a nonjury trial, dismissed the Condominium defendants' cross claim seeking eviction of defendant tenant Rebecca Rosenbaum; App. Div., among other things, reversed, awarded judgment on defendants' cross claim, and directed entry of judgment of eviction in favor of defendant Condominium and against defendant Rosenbaum.