

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
September 21 through September 27, 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.

MARMELSTEIN v KEHILLAT NEW HEMPSTEAD etc. et al.:

1ST Dept. App. Div. order of 8/23/07; reversal with dissents; sua sponte examination whether all claims by or against respondent Mordecai Tendler (including cross claims) have been finally resolved;

TORTS - CAUSES OF ACTION FOR BREACH OF FIDUCIARY DUTY AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST RABBI WHO COUNSELED AND ENGAGED IN SEXUAL RELATIONSHIP WITH MEMBER OF SYNAGOGUE - CIVIL RIGHTS LAW § 80-a;

Supreme Court, New York County denied defendant Mordcai Tendler's motion to dismiss the causes of action for breach of fiduciary duty and intentional infliction of emotional distress; App. Div. reversed, granted defendant Tendler's motion to dismiss those causes of action and directed the Clerk to enter judgment dismissing the complaint against defendant Tendler.

MANONYMOUS v SANONYMOUS:

Supreme Court, Jefferson County order of 8/17/07, bringing up for review prior nonfinal order of 2/2/07; modification and affirmance; sua sponte examination whether an appeal lies pursuant to CPLR 5601(d);

PARENT AND CHILD - CUSTODY - CHALLENGE TO VARIOUS ORDERS ENTERED IN DIVORCE ACTION;

Supreme Court, Jefferson County, among other things, awarded the parties joint custody of their child; App. Div. modified by awarding defendant a certain sum as equitable distribution of the parties' vehicle, and remitted the matter to Supreme Court for further proceedings; Supreme Court determined the parties' rights and liabilities pursuant to a Federal Affidavit of Support.

PLUDEMAN v NORTHERN LEASING SYSTEMS, INC., et al.:

1ST Dept. App. Div. order of 5/15/07; modification and affirmance; leave to appeal granted by App. Div., 9/18/07;

PLEADING - SUFFICIENCY OF PLEADING - FRAUD - WHETHER PLAINTIFFS' ALLEGATIONS OF FRAUD SATISFIED THE PLEADING REQUIREMENTS OF CPLR 3016(b);

Supreme Court, New York County granted defendants' motion to dismiss the complaint in part and otherwise denied the motion; App. Div. modified to reinstate the cause of action for breach of contract as against the corporate defendant, and otherwise affirmed.

VANONYMOUS, MATTER OF, a disbarred attorney:

2ND Dept. App. Div. order of 6/19/07; disbarment of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - AUTOMATIC DISBARMENT - JUDICIARY LAW § 90(4)(b) - DISBARMENT OF ATTORNEY FOLLOWING GUILTY PLEA TO CRIME OF UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE (PENAL LAW § 135.10), A CLASS E FELONY;

App. Div. disbarred respondent attorney.

VUCETOVIC v EPSOM DOWNS, INC.:

1ST Dept. App. Div. order of 9/6/07; affirmance with dissents; Rule 500.11 review pending;

NEGLIGENCE - DUTY - MAINTENANCE OF PREMISES - WHETHER TREE WELLS ARE PART OF THE "SIDEWALK" FOR PURPOSES OF ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 7-210;

Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.