

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
October 26 through November 1, 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.

AG CAPITAL FUNDING PARTNERS, L.P. et al. v STATE STREET BANK AND TRUST COMPANY:

1ST Dept. App. Div. order of 5/17/07; modification and affirmance; leave to appeal granted by Court of Appeals, 10/16/07;

SECURED TRANSACTIONS - SECURITY AGREEMENTS - CLAIMS AGAINST INDENTURE TRUSTEE FOR BREACH OF CONTRACT, BREACH OF DUTIES UNDER TRUST INDENTURE ACT (15 USC § 77aaa, et seq.), BREACH OF FIDUCIARY DUTY AS AN INDENTURE TRUSTEE AND A SECURED PARTY REPRESENTATIVE, AND NEGLIGENCE - EFFECT OF RELEASE IN REORGANIZATION PLAN;

Supreme Court, New York County, granted defendant's motions to vacate a prior grant of partial summary judgment to plaintiffs and for renewal of defendant's motion for partial summary judgment, but denied defendant's motion for partial summary judgment dismissing the fourth, fifth and sixth causes of action; App. Div. modified by granting defendant's motion for partial summary judgment dismissing the fourth, fifth and sixth causes of action, otherwise affirmed and directed the Clerk to enter judgment in favor of defendant dismissing the complaint.

COOPER, MATTER OF, v SELSKY &c.:

3RD Dept. App. Div. order of 9/27/07; confirmation of determination; sua sponte examination whether there is any jurisdictional basis for an appeal as of right;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSIONER'S DETERMINATION OF GUILT WITH RESPECT TO THE CHARGES OF VIOLATING PRISON DISCIPLINARY RULES PROHIBITING POSSESSION OF NARCOTICS AND EXCESS TOBACCO PRODUCTS, REFUSING A DIRECT ORDER, SMUGGLING, REFUSING A SEARCH OR FRISK AND POSSESSION OF CONTRABAND; CLAIMED DENIAL OF FAIR HEARING;

App. Div. confirmed determination of respondent Commissioner of Correctional Services which found petitioner guilty of violating certain prison disciplinary rules, and dismissed the petition.

FEOLA, MATTER OF, v CARROLL:

Supreme Court, Westchester County judgment of 5/24/07, bringing up for review a prior nonfinal 2ND Dept. App. Div. order of 1/24/06; reversal; leave to appeal granted by Court of Appeals, 10/18/07;

CIVIL SERVICE - POLICE - DISCIPLINE OF POLICE - WHETHER PUBLIC OFFICERS LAW § 30(1)(e) AUTHORIZED RESPONDENT POLICE COMMISSIONER TO TERMINATE, WITHOUT A DUE PROCESS HEARING, THE EMPLOYMENT OF A POLICE OFFICER CONVICTED OF ENDANGERING THE WELFARE OF A CHILD (PENAL LAW § 260.10[1]), A CLASS A MISDEMEANOR;

Supreme Court, Westchester County denied a CPLR article 78 petition to review a determination of respondent Police Commissioner which summarily terminated petitioner's employment as a police officer, and dismissed the proceeding; App. Div. reversed, granted the petition, annulled the determination, directed respondents to reinstate petitioner as a police officer and to afford him a due process hearing, and remitted to Supreme Court for calculation of back pay and interest; thereafter, Supreme Court determined the appropriate back pay award to which petitioner is entitled.

FLEMMING, MATTER OF, v TEJADA:

1ST Dept. App. Div. judgment of 9/27/07; denial of CPLR article 78 application; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - DENIAL OF CPLR ARTICLE 78 APPLICATION AND DISMISSAL OF PETITION;

App. Div. denied a CPLR article 78 application and dismissed the petition.

GIAQUINTO, MATTER OF, v COMMISSIONER OF NEW YORK STATE DEPARTMENT OF HEALTH, et al.:

3RD Dept. App. Div. order of 4/5/07; modification and affirmance; leave to appeal granted by Court of Appeals, 10/23/07;

PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78 PROCEEDING TO REVIEW A DETERMINATION OF RESPONDENT COMMISSIONER

PREVAILING PETITIONER IS ENTITLED TO AN AWARD OF COUNSEL FEES UNDER 42 USC § 1988; SOVEREIGN IMMUNITY - WHETHER CLAIM FOR COUNSEL FEES UNDER 42 USC § 1988 IS BARRED BY ELEVENTH AMENDMENT TO FEDERAL CONSTITUTION;

Supreme Court, Albany County granted petitioner's article 78 petition and awarded petitioner counsel fees against respondent Commissioner of Health; App. Div. modified by reversing so much of the judgment as awarded petitioner counsel fees, denied counsel fees and affirmed the judgment as so modified.

JONES v BILL et al.:

2ND Dept. App. Div. order of 11/28/06; affirmance; leave to appeal granted by Court of Appeals, 10/23/07;

MOTOR VEHICLES - LIABILITY OF OWNER OF LEASED VEHICLE - 49 USC § 30106 (THE "GRAVES" AMENDMENT) - WHETHER THE GRAVES AMENDMENT APPLIES TO BAR AN ACTION AGAINST A LESSOR WHERE THE ACTION AGAINST THE LESSEE WAS COMMENCED BEFORE THE EFFECTIVE DATE OF THE GRAVES AMENDMENT AND THE COMPLAINT WAS AMENDED TO ADD THE LESSOR AFTER THE EFFECTIVE DATE OF THE GRAVES AMENDMENT; JOINDER OF A PARTY - CPLR 1003;

Supreme Court, Dutchess County granted defendants' CPLR 3211(a)(7) motion to dismiss the complaint as against defendant DCFS Trust; App. Div. affirmed.

MASTER, MATTER OF, et al. v POHANKA et al.:

2ND Dept. App. Div. order of 9/10/07, also bringing up for review a prior nonfinal App. Div. order of 8/22/07; affirmance (9/10/07 order) and reversal (8/22/07 order); leave to appeal granted by Court of Appeals, 10/18/07;

ELECTIONS - CERTIFICATE OF NOMINATION - INVALIDATION OF WILSON-PAKULA CERTIFICATES (ELECTION LAW § 6-120[3]) ISSUED BY THE SUFFOLK COUNTY WORKING FAMILIES PARTY EXECUTIVE COMMITTEE - ALLEGED VIOLATION OF ONE-PERSON, ONE-VOTE PRINCIPLE OF THE NEW YORK AND FEDERAL CONSTITUTIONS - ELECTION LAW §§ 2-100, 2-104 AND 2-114; STATUTE OF LIMITATIONS; NECESSARY PARTIES; Supreme Court, Suffolk County granted respondents' motion to dismiss the Election Law § 16-102 proceeding based upon petitioners' alleged failure to name and join necessary parties and failure to timely commence the proceeding, and dismissed the proceeding; App. Div. reversed, denied the motion, reinstated the petition and remitted the matter to Supreme Court for further proceedings; Supreme Court determined, among other things, that the Wilson-Pakula certificates issued by the Suffolk County Working Families Party Executive Committee were null and void; App. Div. affirmed.

SCHORR, MATTER OF, v NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, et al.:

1ST Dept. App. Div. order of 6/26/07; affirmance; leave to appeal

PUBLIC HOUSING - SUCCESSION RIGHTS - APPLICABILITY OF DOCTRINE OF
EQUITABLE ESTOPPEL TO CREATE TENANCY IN MITCHELL-LAMA HOUSING;
RETALIATORY EVICTION;

Supreme Court, New York County granted a CPLR article 78 petition
seeking to annul respondent New York City Department of Housing
Preservation and Development's determination granting respondent
East Midtown Plaza Housing Company a certificate of eviction;
App. Div. affirmed.

TORRANCE, MATTER OF, v STOUT et al.:

2ND Dept. App. Div. order of 3/27/07; partial annulment and
confirmation of determination; leave to appeal granted by Court
of Appeals, 10/23/07; Rule 500.11 review pending;

PUBLIC OFFICERS - DEMOTION OF PARK FOREMAN FOR EMPLOYEE
MISCONDUCT - CIVIL SERVICE LAW § 75 - WHETHER PENALTY SET BY
COMMISSIONER OF WESTCHESTER COUNTY DEPARTMENT OF PARKS,
RECREATION AND CONSERVATION WAS SHOCKING TO ONE'S SENSE OF
FAIRNESS; ARTICLE 78 PROCEEDING;

App. Div. granted a CPLR article 78 petition to the extent of
annulling so much of the respondent Commissioner's determination
as demoted petitioner from the position of Park Foreman to the
position of Maintenance Laborer, otherwise denied the petition
and confirmed the determination, and remitted the matter to
respondents for the imposition of an appropriate penalty less
severe than a demotion from Park Foreman to Maintenance Laborer.