

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 2 through November 8, 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.

CASTELLANO (ROBERTO), PEOPLE v:

1ST Dept. App. Div. order of 6/12/07; affirmance; leave to appeal granted by Smith, J., 10/25/07;
CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE
MURDER - SUFFICIENCY OF THE EVIDENCE - DETERMINING SUFFICIENCY OF THE EVIDENCE BASED UPON ELEMENTS OF CRIME CHARGED TO THE JURY WITHOUT OBJECTION - RETROACTIVE APPLICATION OF PEOPLE v FEINGOLD (7 NY3d 288) TO CONVICTIONS ON DIRECT APPEAL; PRESERVATION;
Supreme Court, Bronx County convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 15 years to life; App. Div. affirmed.

GEORGE (RAYMOND C., JR.), PEOPLE v:

3RD Dept. App. Div. order of 8/9/07; modification and affirmance; leave to appeal granted by Ciparick, J., 10/26/07;
CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE
MURDER - APPROPRIATE REMEDY WHERE APPELLATE DIVISION DETERMINES THAT CONVICTION FOR DEPRAVED INDIFFERENCE MURDER IS NOT SUPPORTED BY SUFFICIENT EVIDENCE;

County Court, Schoharie County convicted defendant of murder in the second degree; App. Div. modified by reducing defendant's conviction to manslaughter in the second degree and vacating the sentence imposed thereon, remitted the matter to County Court for resentencing, and affirmed the judgment of conviction as so modified.

LUCIANO (RUBEN), PEOPLE v:

1ST Dept. App. Div. order of 8/2/07; reversal; leave to appeal granted by Graffeo, J., 10/31/07;

CRIMES AND CRIMINAL PROCEDURE - JURORS - SELECTION OF JURY - REMEDY FOR BATSON VIOLATION - WHETHER FORFEITURE OF PEREMPTORY CHALLENGES USED TO UNSUCCESSFULLY STRIKE PROSPECTIVE JURORS IN A DISCRIMINATORY MANNER IS AN APPROPRIATE REMEDY;

Supreme Court, Bronx County convicted defendant, after a jury trial, of criminal possession of a weapon in the second degree and assault in the second degree; App. Div. reversed and remanded for a new trial.

PALL CORPORATION, MATTER OF, v BOARD OF ASSESSORS et al.:

2ND Dept. App. Div. order of 6/19/07; reversal; leave to appeal granted by Court of Appeals, 10/23/07;

TAXATION - TAX REFUND - WHETHER PAYMENTS IN LIEU OF TAXES (PILOT PAYMENTS) ARE CONTRACTUAL OR ARE SUBJECT TO THE PROVISIONS OF THE TAX LAWS; WHETHER NASSAU COUNTY ADMINISTRATIVE CODE § 6-26.0(b)(3)(c), THE "NO CHARGE-BACK" PROVISION, WHICH REQUIRES NASSAU COUNTY TO ABSORB COST OF ANY TAX REFUND OR CREDIT AWARDED TO A PETITIONER IN TAX CERTIORARI PROCEEDINGS, APPLIES TO PILOT PAYMENTS;

Supreme Court, Nassau County denied that branch of intervenor Port Washington Union Free School District's motion which was to permanently enjoin Pall Corp., Board of Assessors of County of Nassau and Board of Assessment Review of County of Nassau from enforcing the terms of an order and judgment dated September 9, 2002; App. Div. reversed, granted that branch of the motion which was to permanently enjoin Pall Corp., Board of Assessors of County of Nassau, and Board of Assessment Review of County of Nassau from enforcing the terms of the order and judgment dated September 9, 2002, to the extent of directing that the Board of Assessors of County of Nassau and the Board of Assessment Review of the County of Nassau shall remit to intervenor Port Washington Union Free School District the sum of \$430,656.42, representing the amount of the credit provided to Pall Corp. against its payment of the second half of the 2002/2003 School Tax Levy, and the sum of \$249,479.98, representing the amount of the credit provided to Pall Corp. against its payment of the first half of the 2003/2004 School Tax Levy, and otherwise denied the motion.

PEARSON &c. v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION et al.:

1ST Dept. App. Div. order of 7/5/07; affirmance with dissents;
leave to appeal granted by App. Div., 10/16/07; Rule 500.11
review pending;

MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - LATE NOTICE - MOTHER
SERVED NOTICE OF CLAIM ON BEHALF OF INFANT DAUGHTER OVER SIX
MONTHS AFTER DAUGHTER'S LAST HOSPITAL APPOINTMENT;

Supreme Court, New York County granted plaintiff's motion
pursuant to CPLR 3217 for leave to voluntarily discontinue the
action without prejudice to renewal before January 1, 2008, and
dismissed the complaint without prejudice; thereafter Supreme
Court granted plaintiff's motion pursuant to General Municipal
Law § 50-3(5) for leave to serve a late notice of claim and
deemed the notice of claim served on the New York City Health and
Hospitals Corporation; App. Div. affirmed.

PULTZ et al. v ECONOMAKIS:

1ST Dept. App. Div. order of 2/15/07; reversal; leave to appeal
granted by Court of Appeals, 10/23/07;

LANDLORD AND TENANT - RENT REGULATION - RECOVERY OF PREMISES FOR
OWNER OCCUPANCY - WHETHER LANDLORD MUST OBTAIN APPROVAL FROM THE
DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR) BEFORE IT MAY
RECOVER THE REMAINING RENT-STABILIZED APARTMENTS IN A 15-UNIT
BUILDING AND CONVERT THE BUILDING INTO A SINGLE-FAMILY HOME FOR
PERSONAL USE PURSUANT TO THE OWNER-OCCUPANCY PROVISIONS OF THE
RENT STABILIZATION LAW AND CODE;

Supreme Court, New York County, among other things, denied
defendants' motion for summary judgment and granted plaintiffs'
cross motion for summary judgment to the extent of declaring that
defendants violated the Rent Stabilization Law and Code by
unilaterally attempting to withdraw the entire building from the
rental market without DHCR approval and for a permanent
injunction restraining defendants from taking any action to
cancel or terminate plaintiffs' leases unless and until DHCR
approval was obtained; App. Div. reversed and dismissed
plaintiffs' complaint.

ZALK (AN ATTORNEY), MATTER OF:

1ST Dept. App. Div. order of 8/23/07; leave to appeal granted by
Court of Appeals, 10/23/07;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - WHETHER THE DEAD
MAN'S STATUTE (CPLR 4519) APPLIES TO BAR RESPONDENT ATTORNEY FROM
TESTIFYING IN DEFENSE OF PROFESSIONAL MISCONDUCT CHARGES AS TO
CONVERSATIONS HE HAD WITH HIS DECEASED CLIENT; WAIVER; ALLEGED
ABUSE OF DISCRETION BY APPELLATE DIVISION;

App. Div., among other things, granted respondent attorney's
motion and the Departmental Disciplinary Committee's cross motion
to the extent of disaffirming the conclusions of law of both the
Referee and the Hearing Panel with respect to the extent of the
applicability of CPLR 4519 in the instant matter and the
recommendations of the Referee and Hearing Panel, respectively;
and upon review of the record de novo, concluded that respondent
engaged in professional misconduct in violation DR 1-102(A)(4)

(conversion), DR 9-102(A) (misappropriation), and DR 1-102(A)(7) (conduct adversely reflecting on respondent's fitness as a lawyer) and suspended respondent from the practice of law in the State of New York for a period of two years, effective September 24, 2007 and until further order of the Court.