

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 9 through November 15, 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.

CUMBERBATCH (ALVARO), PEOPLE v:

1ST Dept. App. Div. order of 11/21/06; affirmance; leave to appeal granted by Kaye, Ch.J., 10/30/07; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WHETHER DEFENDANT VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY ENTERED A GUILTY PLEA WHERE THE TRIAL COURT DID NOT INFORM HIM AT THE TIME OF THE PLEA THAT HE WOULD BE SUBJECT TO MANDATORY PERIOD OF POST-RELEASE SUPERVISION;

Supreme Court, New York County convicted defendant, upon his guilty plea, of robbery in the first degree, and imposed sentence, including a term of post-release supervision; App. Div. affirmed.

G.K. ALAN ASSOCIATES v LAZZARI:

2ND Dept. App. Div. order of 7/10/07; modification and affirmance; leave to appeal granted by App. Div., 10/22/07; PRINCIPAL AND AGENT - "FAITHLESS AGENT RULE" - FORFEITURE OF COMPENSATION;

Supreme Court, Nassau County granted defendant's motion for summary judgment dismissing the complaint, denied as academic that branch of plaintiff's motion which was for summary judgment dismissing defendant's affirmative defenses and denied that branch of plaintiff's separate motion which was for summary judgment dismissing defendant's three counterclaims insofar as asserted against it (the 12/19/05 order); thereafter, Supreme Court granted plaintiff's motion for leave to reargue and, upon reargument, denied that branch of its prior motion which was for summary judgment dismissing the defendant's first and second affirmative defenses and granted that branch of the defendant's prior cross motion which was for leave to amend his answer by interposing three affirmative defenses and two counterclaims (the first 6/21/05 order) and, sua sponte, adjourned the defendant's motion for summary judgment dismissing the complaint (the second 6/21/05 order); App. Div. affirmed the first 6/21/05 order, dismissed the appeal from the second 6/21/05 order and modified the 12/19/05 order by deleting the provision thereof granting defendant's motion for summary judgment dismissing the complaint and substituting therefor a provision denying that motion, and affirmed the 12/19/05 order as so modified.

LITWACK v PLAZA REALTY INVESTORS, INC., et al.:

1ST Dept. App. Div. order of 5/3/07; affirmance; leave to appeal granted by App. Div., 11/1/07; NEGLIGENCE - MAINTENANCE OF PREMISES - ACTION TO RECOVER DAMAGES FOR PERSONAL INJURIES ALLEGEDLY CAUSED BY TOXIC MOLD IN AN APARTMENT - WHETHER DEFENDANTS CREATED OR HAD NOTICE OF THE ALLEGED MOLD HAZARD; SUMMARY JUDGMENT - EXPERT OPINION; Supreme Court, New York County granted plaintiff's motion for leave to renew and reargue and, upon renewal, adhered to its order entered 4/26/05 to the extent that it dismissed the first, third and fifth causes of action; and granted defendants' cross motion for leave to reargue and, upon reargument, modified its 4/26/05 order to the extent of dismissing the remainder of the complaint; App. Div. affirmed.

THOSE CERTAIN UNDERWRITERS AT LLOYDS, LONDON, et al. v OCCIDENTAL GEMS, et al.:

1ST Dept. App. Div. order of 6/28/07; affirmance; leave to appeal granted by App. Div., 11/8/07; Rule 500.11 review pending; DISCLOSURE - EXAMINATION BEFORE TRIAL - WHETHER PART OWNER OF ISRAELI COMPANY THAT OWNS ONE OF THE DEFENDANT CORPORATIONS SHOULD BE COMPELLED TO TRAVEL FROM HIS RESIDENCE IN BELGIUM TO NEW YORK TO SUBMIT TO A DEPOSITION - SCOPE OF DISCLOSURE - WHETHER A CORPORATE DEFENDANT MUST PRODUCE DOCUMENTS FROM AND GIVE TESTIMONY ABOUT A CERTAIN ARBITRATION PROCEEDING IN BELGIUM TO WHICH CORPORATE DEFENDANT WAS NOT A PARTY;

Supreme Court, New York County denied plaintiffs' motion to confirm and granted, in part, defendant Occidental Gems, Inc.'s cross motion to reject a Special Referee's report; App. Div. affirmed.

MELROSE COMMONS URBAN RENEWAL AREA PHASE II, MATTER OF, v CITY OF NEW YORK:

1ST Dept. App. Div. order of 2/20/07; modification and affirmance; leave to appeal granted by App. Div. 10/30/07; Rule 500.11 review pending;

EMINENT DOMAIN - AWARD - WHETHER ITEMS AT THE BUSINESS PREMISES ARE COMPENSABLE AS TRADE FIXTURES IN THE CONTEXT OF EMINENT DOMAIN;

Supreme Court, Bronx County awarded claimant the principal sum of \$525,000 as just compensation for its trade fixtures; App. Div. modified to the extent of remanding the matter for the deduction from the award of the sound value of handheld power tools, concrete blocks and a custom-made front door, and for a further determination of the value of the noncompensable components of the building's basic electrical system (also to be deducted from the award), and otherwise affirmed.

STATE OF NEW YORK INSURANCE DEPARTMENT, LIQUIDATION BUREAU &c. v GENERALI INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 10/16/07; affirmance with dissents; INDEMNITY - CONTRACTUAL INDEMNITY - PRORATION OF COSTS OF DEFENSE AND INDEMNIFICATION BETWEEN TWO INSURERS OF PROPERTY OWNER SUED IN ACTION ARISING OUT OF TENANTS' EXPOSURE TO LEAD PAINT - "TIME ON THE RISK" CONCEPT; DECLARATORY JUDGMENT ACTION - CONTRIBUTION FOR DEFENSE AND SETTLEMENT OF UNDERLYING PERSONAL INJURY ACTION; Supreme Court, New York County, among other things, granted plaintiff's cross motion for summary judgment as against defendant Generali Insurance Company and directed entry of judgment against Generali in the principal amounts of \$23,302.42 and \$210,191.08; App. Div. affirmed.