

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 16 through November 22, 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.

BOTTORFF, MATTER OF, v KIRK, et al.:

4TH Dept. App. Div. orders of 10/23/07, 9/18/07 and 9/5/07; dismissal of proceedings; sua sponte examination of whether the orders appealed from finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDINGS AGAINST JUDGE, DISTRICT ATTORNEY AND OTHERS - PROCEEDINGS DISMISSED BY APPELLATE DIVISION;

App. Div. dismissed two CPLR article 78 proceedings and denied petitioner's motion to vacate the dismissals.

FLAX, PEOPLE, ex rel. v DONELLI:

3RD Dept. App. Div. order of 9/27/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; HABEAS CORPUS - WHEN REMEDY AVAILABLE - ISSUES THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL OR IN CPL ARTICLE 440 MOTION; Supreme Court, Franklin County dismissed petitioner's CPLR article 70 application without a hearing; App. Div. affirmed.

LOVE'M SHELTERING, INC., MATTER OF, v COUNTY OF SUFFOLK, et al.:

2ND Dept. App. Div. order of 10/24/06; modification; sua sponte examination of whether a jurisdictional basis exists for an appeal as of right; COUNTIES - COMPTROLLER - VALIDITY OF AUDIT - WHETHER AUDIT PROCESS PERFORMED BY COUNTY COMPTROLLER WAS UNCONSTITUTIONAL AND FINAL AUDIT REPORT WAS NULL AND VOID; Supreme Court, New York County, among other things, dismissed the article 78 petition to review a final audit report of the county comptroller which determined that petitioner had been overpaid by the county in the sum of over \$600,000; App. Div. modified by adding a provision declaring that the audit was valid and the audit process was constitutional.

NYCTL 1999-1 TRUST, et al. v 114 TENTH AVENUE ASSOCIATION, INC., et al.:

1ST Dept. App. Div. order of 10/30/07; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; MORTGAGES - FORECLOSURE - DENIAL OF MOTION TO VACATE JUDGMENT OF FORECLOSURE AND SALE AND TO SET ASIDE RESULTING SALE - ALLEGED VIOLATIONS OF DUE PROCESS; Supreme Court, New York County denied defendant 114 Tenth Avenue Association, Inc.'s motion to vacate the judgment of foreclosure and sale and to set aside the resulting foreclosure sale, and denied defendant's subsequent motion to renew; App. Div. affirmed.

RAMROOP, MATTER OF, v FLEXO-CRAFT PRINTING, INC., et al.:

3RD Dept. App. Div. order of 6/21/07; affirmance; leave to appeal granted by Court of Appeals, 11/15/07; WORKERS' COMPENSATION - EXTENT OF DISABILITY - WHETHER CLAIMANT'S STATUS AS AN UNDOCUMENTED ALIEN INELIGIBLE FOR EMPLOYMENT IN THE UNITED STATES PRECLUDES HIS RECOVERY OF "ADDITIONAL COMPENSATION" BENEFITS UNDER WORKERS' COMPENSATION LAW § 15(3)(v) - WORKERS' COMPENSATION LAW § 17; App. Div. affirmed a Workers' Compensation Board determination that claimant was not qualified to additional workers' compensation benefits pursuant to Workers' Compensation Law § 15(3)(v).