

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 30 through December 6, 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.

BARET (ROMAN), PEOPLE v:

1ST Dept. App. Div. order of 9/6/07; affirmance with dissents; leave to appeal granted by Marlow, J., 11/8/07; CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WITHDRAWAL OF PLEA - DENIAL OF MOTION TO WITHDRAW GUILTY PLEA - ALLEGED COERCION TO ENTER GUILTY PLEA; IDENTIFICATION OF DEFENDANT - DENIAL OF MOTION TO SUPPRESS IDENTIFICATION TESTIMONY WITHOUT A HEARING; APPLICATION FOR DISCLOSURE OF SEARCH WARRANT AND UNDERLYING MATERIALS; Supreme Court, Bronx County judgment convicting defendant of criminal sale of a controlled substance in the third degree and sentencing him to a term of 2 to 6 years; App. Div. affirmed.

CONROY, et al. v STATE COMMITTEE OF THE INDEPENDENCE PARTY et al.:

2ND Dept. App. Div. order of 9/10/07; modification and affirmance; leave to appeal granted by Court of Appeals, 11/27/07;

ELECTIONS - POLITICAL PARTIES - ELECTION LAW § 6-120(3) - VALIDITY OF POLITICAL PARTY RULES VESTING EXECUTIVE COMMITTEE OF THE STATE COMMITTEE OF THE INDEPENDENCE PARTY OF NEW YORK WITH POWER TO ISSUE CERTIFICATES AUTHORIZING THE DESIGNATION OR NOMINATION OF CANDIDATES NOT ENROLLED AS MEMBERS OF THE INDEPENDENCE PARTY OF NEW YORK FOR PUBLIC OFFICES IN THE CITY OF NEW YORK WHICH ARE NOT TO BE FILLED BY ALL VOTERS OF THE CITY OF NEW YORK; ALLEGED VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS;

Supreme Court, Kings County granted a petition for an order declaring invalid Article VI, section 11, of the New York State Independence Party by-laws, as adopted on June 10, 2007, and annulled that by-law; App. Div. modified the order by deleting the provision that, in effect, declared the amendment to Article VI, section 11, of the by-laws invalid insofar as it vests the Executive Committee of the State Committee of the Independence Party of New York with the power to issue certificates authorizing the designation or nomination of candidates not enrolled as member of the Independence Party of New York for public offices in the City of new York which are not to be filled by the voters of the City of New York, and substituted therefor a provision declaring that portion of the amendment valid, and affirmed the order as so modified.

DERRICK, PEOPLE ex rel., v WARDEN, &c.:

1ST Dept. App. Div. order of 9/25/07; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL; App. Div. denied petition for writ of habeas corpus.

FIVECO, INC., MATTER OF, v HABER:

2ND Dept. App. Div. order of 7/10/07; modification and affirmance; leave to appeal granted by Court of Appeals, 11/20/07;

ARBITRATION - STAY OF ARBITRATION - TIMELINESS - STAY APPLICATION FILED AFTER TIME LIMIT SET FORTH IN CPLR 7503(c) - ALLEGED EXPIRATION OF UNDERLYING AGREEMENT CONTAINING ARBITRATION CLAUSE; Supreme Court, Nassau County granted a CPLR article 75 petition to permanently stay arbitration and denied respondent's motion for legal fees; App. Div. modified by deleting the provision of the order granting the petition and substituting therefor a provision denying the petition, and affirmed the order as so modified.

FLEMMING, MATTER OF, v. BOYLE &c et al.:

1ST Dept. App. Div. order of 11/15/07; denial of CPLR article 78 application and dismissal of petition; sua sponte examination whether a substantial constitutional question is directly involved in 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.

GOLDMAN v WHITE PLAINS CENTER FOR NURSING CARE, LLC, et al.:

1ST Dept. App. Div. order of 8/2/07; reversal; leave to appeal granted by Court of Appeals, 11/27/07;
CONTRACTS - EMPLOYMENT CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - WHETHER PLAINTIFF IS ENTITLED TO PRESUMPTION THAT HER EMPLOYMENT CONTRACT WAS RENEWED FOR CONTINUOUS ONE-YEAR TERMS BASED UPON THE PARTIES' CONDUCT;
Supreme Court, New York County granted plaintiff's motion for partial summary judgment on liability as to her breach of contract claim and, as relevant here, denied defendants' cross motion for partial summary judgment dismissing the breach of contract claim; App. Div. reversed, denied plaintiff's motion, granted defendants' cross motion and dismissed the breach of contract claim.

MARKOWITZ, MATTER OF, v SERIO, et al.:

1ST Dept. App. Div. order of 4/5/07; reversal; leave to appeal granted by Court of Appeals, 11/15/07;
RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - ANNUAL REPORTS CERTAIN AUTO INSURERS ARE REQUIRED TO FILE WITH THE DEPARTMENT OF INSURANCE PURSUANT TO 11 NYCRR 218.7 (REGULATION 90), WHICH DEEMS SUCH REPORTS PUBLIC RECORDS - WHETHER SUCH REPORTS ARE EXEMPT FROM DISCLOSURE UNDER FOIL'S SUBSTANTIAL COMPETITIVE INJURY EXCEPTION (PUBLIC OFFICERS LAW § 87[2][d]);
Supreme Court, New York County granted petitioner's article 78 petition to the extent of annulling the August 9 and October 18, 2004 determinations of respondent Superintendent of the Insurance Department, denying petitioner's appeals of the denial of FOIL requests and directing respondent to comply with such requests; App. Div. reversed, reinstated and confirmed the determinations, denied the petition and dismissed the proceeding.

MARTIN v GOORD:

3RD Dept. App. Div. order of 11/8/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - INMATE GRIEVANCE - GOOD TIME CREDIT;
Supreme Court, Albany County dismissed petitioner's CPLR article 78 application to review respondent's determination denying petitioner's inmate grievance; thereafter Supreme Court dismissed petitioner's CPLR article 78 application to review respondent's determination withholding petitioner's good time credit; App. Div. affirmed both judgments.

MORALES v D&A FOOD SERVICE, et al.:

1ST Dept. App. Div. order of 6/28/07; affirmance; leave to appeal granted by App. Div., 11/27/07;

LABOR - SAFE PLACE TO WORK - LABOR LAW § 240(1) - LIABILITY OF OWNER WHERE CONSTRUCTION WORK AT ISSUE WAS PERFORMED WITHOUT OWNER'S KNOWLEDGE AND IN VIOLATION OF LEASE PROVISION REQUIRING OWNER'S PRIOR CONSENT; SUMMARY JUDGMENT; LANDLORD AND TENANT; Supreme Court, Bronx County granted defendant Santomero, III's motion for summary judgment to dismiss the Labor Law § 240(1) claim as against him and denied plaintiff's cross motion for summary judgment on that claim; App. Div. affirmed.