

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**December 7 through December 13, 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.**

SIMMONS (DONNIE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 7/12/07; affirmance; leave to appeal granted by Catterson, J., 11/29/07;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - ALLEGED FAILURE OF DEFENDANT'S COUNSEL TO EFFECT DEFENDANT'S INTENT TO TESTIFY BEFORE THE GRAND JURY;

Supreme Court, New York County convicted defendant, after a jury trial, of criminal possession of a controlled substance in the third and fifth degrees, and sentenced him, as a second felony offender, to an aggregate term of 4 1/2 to 9 years; App. Div. affirmed.

SWIDERSKA v NEW YORK UNIVERSITY et al.:

2<sup>ND</sup> Dept. App. Div. order of 11/8/06; affirmance; leave to appeal granted by Court of Appeals, 11/27/07; Rule 500.11 review pending;

LABOR - SAFE PLACE TO WORK - WHETHER INJURED PLAINTIFF WAS ENGAGED IN ACTIVITY COVERED BY LABOR LAW § 240(1) WHEN SHE FELL FROM A HEIGHT OF APPROXIMATELY THREE FEET WHILE CLEANING AN INTERIOR WINDOW AT A 19-STORY DORMITORY BUILDING PURSUANT TO A COMMERCIAL CONTRACT BETWEEN PLAINTIFF'S EMPLOYER AND DEFENDANT LESSEE OF THE BUILDING;

Supreme Court, Kings County granted defendants' respective cross motions for summary judgment on the issue of liability pursuant to Labor Law § 240(1) and dismissed the complaint; App. Div. affirmed.

VENIGALLA, et al., MATTER OF, v NORI et al.:

2<sup>ND</sup> Dept. App. Div. order of 6/19/07, bringing up for review prior nonfinal App. Div. order of 8/25/03; affirmance (6/19/07 order) and reversal (8/25/03 order); leave to appeal granted by Court of Appeals, 11/27/07;

RELIGIOUS CORPORATIONS AND ASSOCIATIONS - ALLEGED JUDICIAL INTRUSION INTO MATTERS OF RELIGIOUS DOCTRINE - ENFORCEMENT OF HINDU TEMPLE SOCIETY OF NORTH AMERICA'S (THE SOCIETY'S) 1970 BY-LAWS - WHETHER SOCIETY'S 1970 BY-LAWS CONFLICT WITH ARTICLE 9 OF THE RELIGIOUS CORPORATION LAW AND THE SOCIETY'S ARTICLES OF INCORPORATION AND PRACTICES;

Supreme Court, Queens County denied those branches of a petition pursuant to N-PCL 706 to remove the Board of Trustees of the Hindu Temple Society of North America, invalidate the post-1970 by-laws and appoint a referee; App. Div. reversed, granted those branches of the petition which were to remove the Board of Trustees of the Hindu Temple Society of North America, invalidate the post-1970 by-laws, and appoint a referee; reinstated the 1970 by-laws; remitted to Supreme Court for the appointment of a referee to direct and oversee a reorganizational meeting of the Hindu Temple Society of North America, for the purpose of electing a new Board of Trustees; and ordered that the present Board of Trustees shall remain in office until a new board is elected; thereafter, Supreme Court, among other things, upon a 3/10/06 report of the referee, directed that the newly-elected trustees of Hindu Temple Society of North America assume their duties upon the signing of the judgment; App. Div. affirmed the judgment.