

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
December 28 through January 3, 2008

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.

FRUTCHEY &c. et al. v FELICITA et al.:

3RD Dept. App. Div. order of 11/21/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution, and specifically, whether there are any cross claims or counterclaims against Michael V. DeLosa or Allen's Plumbing, Heating and Air Conditioning, Inc.;

NEGLIGENCE - EMERGENCY DOCTRINE - SUMMARY JUDGMENT;

Supreme Court, Chemung County denied a motion by defendants Michael V. DeLosa and Allen's Plumbing, Heating and Air Conditioning, Inc. for summary judgment dismissing the complaint against them; App. Div. reversed, granted summary judgment to defendants Michael V. DeLosa and Allen's Plumbing, Heating and Air Conditioning, Inc. and dismissed the complaint as against those defendants.

LUCAS (DELON), PEOPLE v:

2ND Dept. App. Div. order of 9/18/07; affirmance; leave to appeal granted by Graffeo, J., 12/21/07;
CRIMES AND CRIMINAL PROCEDURE - MURDER - WHETHER TRIAL COURT ERRED IN DENYING MOTION TO DISMISS THE FIRST-DEGREE MURDER COUNT OF THE INDICTMENT - WHETHER THE KIDNAPING OFFENSE, THE AGGRAVATOR SUPPORTING ELEVATION OF THE INTENTIONAL MURDER TO A FIRST DEGREE OFFENSE, WAS SUBSUMED IN THE MURDER OFFENSE ITSELF - PEOPLE v CAHILL (2 NY3d 13 [2003]);
Supreme Court, Kings County convicted defendant, upon his guilty plea, of murder in the first and second degrees, and imposed sentence; App. Div. affirmed.

ODOM, MATTER OF, v SELSKY:

3RD Dept. App. Div. order of 12/5/07; denial of application; sua sponte examination whether the Appellate Division order finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal taken as of right;
APPEAL - APPELLATE DIVISION - DENIAL OF APPLICATION FOR RENEWAL;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES;
App. Div. denied petitioner's application for renewal.

PANTELIDIS, MATTER OF, v NEW YORK CITY BOARD OF STANDARDS AND APPEALS, et al.:

1ST Dept. App. Div. order of 8/16/07; affirmance with dissent; leave to appeal granted by App. Div., 12/20/07; Rule 500.11 review pending;
MUNICIPAL CORPORATIONS - ZONING - VARIANCE - WHETHER SUPREME COURT ERRED IN HOLDING A HEARING TO DETERMINE PETITIONER'S GOOD FAITH RELIANCE ON BUILDING PERMIT REVOKED AFTER COMPLETION OF WORK - WHETHER MATTER SHOULD HAVE BEEN REMANDED TO AGENCY FOR DETERMINATION WHETHER TO ISSUE AN AREA VARIANCE;
Supreme Court, New York County granted a CPLR article 78 petition to the extent of directing a hearing upon the issue whether petitioner erected the disputed structure in good faith reliance on permit approved by respondent New York City Department of Buildings; App. Div. affirmed; thereafter, Supreme Court granted the CPLR article 78 petition to annul a resolution of respondent Board of Standards and Appeals (BSA) denying petitioner an area variance and directed BSA to issue the variance; App. Div. affirmed.

PEREZ v TIME MOVING AND STORAGE, INC.

1ST Dept. App. Div. order of 11/8/07; denial of motion; sua sponte examination whether the Appellate Division order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal taken as of right;
APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL - DENIAL OF MOTION TO ENLARGE TIME TO PERFECT APPEAL - ACTION AGAINST MOVING COMPANY REMOVED FROM SUPREME COURT TO CIVIL COURT OF THE CITY OF NEW YORK;

Supreme Court, New York County transferred the action to Civil Court of the City of New York and directed that discovery proceed as provided in all previously issued orders; App. Div. denied appellant's motion for an enlargement of time to perfect her appeal and dismissed the appeal.