

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**February 29 through March 6, 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.**

BUSS (ROBERT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 10/2/07; affirmance; leave to appeal granted by Court of Appeals, 2/19/08;

CRIMES AND CRIMINAL PROCEDURE - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER DEFENDANT IS SUBJECT TO SORA'S REQUIREMENTS WHERE HIS 1983 SENTENCE FOR A REGISTRABLE OFFENSE EXPIRED PRIOR TO SORA'S EFFECTIVE DATE - CHALLENGE TO LEVEL THREE DESIGNATION - DENIAL OF MOTION TO STRIKE VICTIM IMPACT STATEMENT FROM 1987 PRESENTENCE REPORT - CLAIM THAT DEFENDANT DID NOT COMMIT SEX CRIMES;

Nassau County Court order designating defendant a level three sex offender pursuant to Correction Law article 6-C; App. Div. affirmed.

EDUARDO (JUAN), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/9/07; affirmance; leave to appeal granted by Jones, J., 2/19/08;  
CRIMES AND CRIMINAL PROCEDURE - CONTROLLED SUBSTANCES - LEGAL SUFFICIENCY OF THE EVIDENCE SUPPORTING DEFENDANT'S CONVICTION OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE; APPELLATE DIVISION DETERMINATION THAT DEFENDANT FAILED TO PRESERVE HIS CONSTITUTIONAL CLAIMS;  
Supreme Court, New York County convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree; App. Div. affirmed.

ELVIN G., MATTER OF (ANONYMOUS):

1<sup>ST</sup> Dept. App. Div. order of 1/29/08; affirmance with dissents; sua sponte examination whether the dissent is on a question of law in appellant's favor;  
INFANTS - JUVENILE DELINQUENTS - STUDENT SEARCH - DENIAL OF SUPPRESSION MOTION WITHOUT A HEARING - JUSTIFICATION FOR SEARCH; Family Court, Bronx County order of disposition adjudicating appellant a juvenile delinquent upon a fact-finding determination that he committed the act of unlawful possession of a weapon by a person under 16, and placing him with the Office of Children and Family Services for a period of 12 months; App. Div. affirmed.

HELMSLEY-SPEAR, INC., et al. v FISHMAN et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/19/07; reversal; leave to appeal granted by Court of Appeals, 2/19/08;  
LABOR UNIONS - FEDERAL PREEMPTION - WHETHER NATIONAL LABOR RELATIONS ACT PREEMPTS ACTION AGAINST LABOR UNION FOR PRIVATE NUISANCE ARISING OUT OF LOUD DRUMMING TO PUBLICIZE UNION'S HANDBILLING ACTIVITIES;  
Supreme Court, New York County granted plaintiffs' motion for a preliminary injunction against defendants continuing their "banging racket" outside the Empire State Building; App. Div. reversed, vacated the injunction and dismissed the complaint.

JAMES (TEBRUE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 1/22/08; affirmance; leave to appeal granted by Andrias, J., 2/21/08;  
CRIMES AND CRIMINAL PROCEDURE - LESSER INCLUDED OFFENSE - WHETHER ANY REASONABLE VIEW OF THE EVIDENCE SUPPORTED THE SUBMISSION TO THE JURY OF THIRD-DEGREE ROBBERY AS A LESSER INCLUDED OFFENSE OF FIRST-DEGREE ROBBERY;  
Supreme Court, New York County convicted defendant, after a jury trial, of robbery in the first and second degrees, and sentenced him to an aggregate term of eight years; App. Div. affirmed.

JOHNSON v KLING:

2<sup>ND</sup> Dept. App. Div. order of 2/19/08; affirmance; leave to appeal granted by App. Div., 2/19/08; Rule 500.11 review pending;

MOTOR VEHICLES - LIABILITY OF OWNER OF LEASED VEHICLE - 49 USC § 30106 (THE "GRAVES" AMENDMENT) - WHETHER THE GRAVES AMENDMENT APPLIES TO BAR AN ACTION AGAINST AN OWNER/LESSOR WHERE THE ACTION AGAINST THE LESSEE WAS COMMENCED BEFORE THE EFFECTIVE DATE OF THE GRAVES AMENDMENT AND THE COMPLAINT WAS AMENDED TO ADD THE LESSOR AFTER THE EFFECTIVE DATE OF THE GRAVES AMENDMENT;

Supreme Court, Suffolk County granted the motion of defendants GMAC Leasing Corp., General Motors Acceptance Corp. and Vault Trust Corp. to dismiss the amended complaint insofar as asserted against them as barred by 49 USC § 30106; App. Div. affirmed.

JONES (LIONEL), PEOPLE v:

4<sup>th</sup> Dept. App. Div. order of 2/1/08; affirmance; leave to appeal granted by Pine, J., 2/27/08;

CRIMES AND CRIMINAL PROCEDURE - JURORS - PEREMPTORY CHALLENGE - ALLEGED RACIAL DISCRIMINATION IN THE JURY SELECTION PROCESS - WHETHER TRIAL COURT ERRED IN DECIDING DEFENDANT'S BATSON CHALLENGE WITHOUT FIRST REQUIRING THE PROSECUTOR TO GIVE HIS REASON FOR THE CHALLENGE;

Erie County Court convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the fourth degree; App. Div. affirmed and remitted matter to Erie County Court for proceedings pursuant to CPL 460.50(5).

LINDSEY, PEOPLE ex rel. v GOORD:

3<sup>RD</sup> Dept. App. Div. order of 1/18/08; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS; SENTENCE - ADMINISTRATIVE IMPOSITION OF POST-RELEASE SUPERVISION; App. Div. denied petitioner's application for a writ of habeas corpus.

PEDRO JASON WILLIAM M., et al., MATTER OF (ANONYMOUS):

1<sup>ST</sup> Dept. App. Div. order of 11/20/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PARENT AND CHILD - WHETHER FATHER WAS A PERSON WHOSE CONSENT TO HIS CHILDREN'S ADOPTION WAS REQUIRED - DOMESTIC RELATIONS LAW § 111(1)(d) - ALLEGED VIOLATION OF DUE PROCESS AND EQUAL PROTECTION RIGHTS;

Family Court, New York County determined that respondent was not a person whose consent to his children's adoption was required; App. Div. affirmed.

OMNI RECYCLING OF WESTBURY, INC., MATTER OF v TOWN OF OYSTER BAY et al.:

2<sup>ND</sup> Dept. App. Div. order of 6/5/07; modification and affirmance; leave to appeal granted by Court of Appeals, 2/19/08;

MUNICIPAL CORPORATIONS - BIDS AND BIDDERS - WHETHER COMPETITIVE BIDDING REQUIREMENTS OF GENERAL MUNICIPAL LAW § 103(1) APPLY TO THE CONTRACT FOR RECYCLING SERVICES AT ISSUE - APPLICABILITY OF GENERAL MUNICIPAL LAW § 104-b;

Supreme Court, Nassau County denied the petition to annul Resolution 199-2005 of the Town Board of the Town of Oyster Bay; App. Div. modified the judgment by deleting the provision denying that branch of the petition which was to annul Resolution No. 199-2005 of the Town Board of the Town of Oyster Bay and substituting therefor a provision granting that branch of the petition; annulled Resolution No. 199-2005 of the Town Board of the Town of Oyster Bay and Contract No. DPW 05-909 between the Town of Oyster Bay and Giove Company, Inc.; and affirmed the judgment as so modified.

PACKER (ANDREW):

1<sup>st</sup> Dept. App. Div. order of 1/29/08; reversal; leave to appeal granted by Malone, J., 2/19/08; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - SUPPRESSION HEARING - WHETHER DEFENDANT'S CONSENT TO SEARCH OF BACKPACK WAS VOLUNTARY AFTER PRIOR ILLEGAL FRISK;

Supreme Court, New York County convicted defendant of attempted criminal possession of a weapon in the third degree and sentenced him, as a second felony offender, to a term of 1 1/2 to 3 years; App. Div. reversed, granted the suppression motion and dismissed the indictment.

COMMITTEE TO SAVE ST. BRIGID'S, INC., et al. v EGAN, et al.:

1<sup>st</sup> Dept. App. Div. order of 11/15/07; affirmance; leave to appeal granted by Court of Appeals, 2/19/08; RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DEMOLITION OF CHURCH BUILDING - RES JUDICATA - REVOCATION OF DEMOLITION PERMITS - ALLEGED VIOLATION OF RELIGIOUS CORPORATION LAW § 5 - BREACH OF FIDUCIARY DUTY - PARISHIONERS' STANDING TO SUE UNDER NOT-FOR-PROFIT CORPORATION LAW § 623; Supreme Court, New York County dismissed plaintiffs' complaint; App. Div. affirmed.

STERN v BLUESTONE:

1<sup>st</sup> Dept. App. Div. order of 1/31/08; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; CONSUMER PROTECTION - TELEPHONE CONSUMER PROTECTION ACT (TCPA) (47 USC § 227) - SUMMARY JUDGMENT - WHETHER "ATTORNEY MALPRACTICE REPORTS" DEFENDANT FAXED TO PLAINTIFF CONSTITUTED PROHIBITED ADVERTISEMENTS WITHIN THE MEANING OF THE TCPA - DEFENDANT'S WILLFUL AND KNOWING VIOLATION OF THE TCPA - STATUTE OF LIMITATIONS APPLICABLE TO THE TCPA - WHETHER "ATTORNEY MALPRACTICE REPORTS" CONSTITUTED PROTECTED SPEECH UNDER THE FEDERAL AND STATE CONSTITUTIONS;

Supreme Court, New York County, among other things, granted plaintiff's motion for partial summary judgment as to liability on his cause of action pursuant to the Telephone Consumer Protection Act of 1991 (47 USC § 227) and dismissed defendant's second affirmative defense; App. Div. affirmed.