

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 4 through April 10, 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.

ASPEN CREEK ESTATES, LTD., MATTER OF, v TOWN OF BROOKHAVEN, et al:

2ND Dept. App. Div. order of 12/4/07; confirmation of determination; leave to appeal granted by App. Div., 3/28/08; EMINENT DOMAIN - PUBLIC USE - WHETHER TOWN'S DECISION TO EXERCISE ITS POWER OF EMINENT DOMAIN TO CONDEMN THE SUBJECT PROPERTY IN ORDER TO PRESERVE ITS USE AS FARMLAND SERVES A LEGITIMATE PUBLIC PURPOSE OR IS INSTEAD A PRETEXT TO IMPROPERLY CONFER BENEFITS UPON PRIVATE PERSONS - EDPL 207 PROCEEDING; App. Div. confirmed determination of respondent Town to acquire petitioner's property by condemnation, denied the petition and dismissed the proceeding.

CINTRON (ELIEZER), PEOPLE v:

1ST Dept. App. Div. order of 12/18/07; affirmance; CONSTITUTIONAL LAW - DUE PROCESS - EQUAL PROTECTION - SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ARTICLE 6-C) - WHETHER INDIVIDUAL CONVICTED OF AN ABDUCTION-RELATED CRIME INVOLVING A CHILD CAN BE REQUIRED TO REGISTER AS A "SEX OFFENDER" WHERE THERE WAS NO SEXUAL COMPONENT OR MOTIVE FOR THE CRIME; Supreme Court, Bronx County adjudicated defendant a level three sex offender under SORA; App. Div. affirmed.

COHEN et al. v MEMORIAL SLOAN-KETTERING CANCER CENTER et al.:

1ST Dept. App. Div. order of 2/5/08; modification and affirmance with dissents; leave to appeal granted by App. Div., 4/3/08; Rule 500.11 review pending;

LABOR - SAFE PLACE TO WORK - SUMMARY JUDGMENT - WHETHER PLAINTIFFS WERE ENTITLED TO SUMMARY JUDGMENT ON LIABILITY ON THEIR LABOR LAW § 240(1) CLAIM UPON THE GROUND THAT "THE SAFETY DEVICE MADE AVAILABLE TO PERFORM THE ASSIGNED TASK AT AN ELEVATION COULD NOT BE PROPERLY PLACED AT THAT SPOT IN A POSITION THAT WOULD PROVIDE ADEQUATE PROTECTION TO THE WORKER FROM THE RISK OF FALLING WHEN HE DESCENDED THE LADDER";

Supreme Court, New York County granted defendants' motion for summary judgment dismissing the cause of action under Labor Law § 241(6) and denied plaintiffs' cross motion for summary judgment on their claim under Labor Law § 240(1); App. Div. modified by granting plaintiffs' cross motion for summary judgment on their Labor Law § 240(1) claim and affirmed as so modified.

DIGGINS (ISAAC), PEOPLE v:

1ST Dept. App. Div. order of 11/1/07; affirmance; leave to appeal granted by Pigott, J., 3/27/08;

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - PERSISTENT VIOLENT FELONY OFFENDER - WHETHER TRIAL COURT ERRED IN FINDING DEFENDANT TO BE A PERSISTENT VIOLENT FELONY OFFENDER WITHOUT A HEARING REGARDING THE CONSTITUTIONALITY OF THE PRIOR CONVICTION AND WITHOUT ALLOWING DEFENDANT AN ADJOURNMENT TO OBTAIN THE

TRANSCRIPT OF THE PRIOR TRIAL; EVIDENCE OF PRIOR CONVICTIONS; PROSECUTOR'S ALLEGEDLY IMPROPER REMARKS IN SUMMATION;

Supreme Court, New York County convicted defendant, after a jury trial, of attempted murder in the second degree, assault in the first degree and criminal possession of a weapon in the second and third degrees, and sentenced him, as a persistent violent felony offender, to an aggregate term of 25 years to life; App. Div. affirmed.

ELYSEE (FRITZ), PEOPLE v:

2ND Dept. App. Div. order of 12/18/07; affirmance; leave to appeal granted by Smith, J., 4/4/08;

CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE - WHETHER SEIZURE OF BLOOD TAKEN FROM DEFENDANT BY A MEDICAL PROFESSIONAL AT A HOSPITAL VIOLATES THE PHYSICIAN-PATIENT PRIVILEGE (CPLR 4505[a]) - SUPPRESSION OR EXCLUSION OF EVIDENCE; INSTRUCTIONS - WHETHER THE TRIAL COURT PROPERLY REFUSED TO CHARGE THE JURY WITH CRIMINALLY NEGLIGENT HOMICIDE AS A LESSER INCLUDED OFFENSE OF MANSLAUGHTER IN THE SECOND DEGREE;

Supreme Court, Kings County convicted defendant of manslaughter in the second degree, assault in the second degree, assault in the third degree (two counts), and driving while intoxicated; App. Div. affirmed.

JAZILEK v ABART HOLDINGS, INC.:

1ST Dept. App. Div. order of 6/5/07; reversal; leave to appeal granted by Court of Appeals, 3/25/08; Rule 500.11 review pending; LANDLORD AND TENANT - RENT REGULATION - ACTION FOR JUDGMENT DECLARING PLAINTIFF TO BE A RENT-STABILIZED TENANT - WHETHER PARTIES' SO-ORDERED STIPULATION IN UNDERLYING HOLDOVER PROCEEDING IS VOID AS AGAINST PUBLIC POLICY AS VIOLATING THE RENT STABILIZATION LAWS WHERE IT PERMITTED PLAINTIFF TENANCY AT PLEASURE OF LANDLORD, CONFERRED NO RIGHTS OTHER THAN THOSE STATED IN THE STIPULATION AND CREATED NO INDEPENDENT STATUS OR PROTECTION UNDER THE RENT STABILIZATION LAW; Supreme Court, New York County denied defendant's motion to dismiss the complaint; App. Div. reversed, granted defendant's motion and dismissed the complaint.

JOHNSON (CLARENCE A.), PEOPLE v:

4TH Dept. App. Div. order of 11/23/07; affirmance; leave to appeal granted by Court of Appeals, 3/25/08; CRIMES AND CRIMINAL PROCEDURE - SEX OFFENDER REGISTRATION ACT (SORA) - WHETHER A SEX OFFENDER WHOSE CONVICTION ARISES FROM DOWNLOADING PORNOGRAPHIC IMAGES OF UNKNOWN MINORS ONTO HIS COMPUTER HAD A "RELATIONSHIP" WITH THE INDIVIDUALS DEPICTED IN THE IMAGES SO AS TO BE ASSESSED POINTS UNDER SORA RISK FACTOR SEVEN, "RELATIONSHIP WITH VICTIM"; Genesee County Court adjudicated defendant a level two sex offender under SORA; App. Div. affirmed.

QUINONES (GEORGE), PEOPLE v:

2ND Dept. App. Div. order of 11/27/07; affirmance; leave to appeal granted by Ciparick, J., 3/31/08; CRIMES AND CRIMINAL PROCEDURE - SENTENCE - WHETHER DEFENDANT'S SENTENCING AS A PERSISTENT FELONY OFFENDER VIOLATED HIS CONSTITUTIONAL RIGHTS PURSUANT TO APPRENDI v NEW JERSEY (503 US 466) - CUNNINGHAM v CALIFORNIA (__ US __, 127 S Ct 856); EXISTENCE OF REASONABLE SUSPICION TO DETAIN DEFENDANT; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO COUNSEL'S FAILURE TO CHALLENGE THE SEARCH OF DEFENDANT'S KNAPSACK WITHOUT A WARRANT; Supreme Court, Kings County convicted defendant of burglary in the third degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

TAVERAS (JUAN), PEOPLE v:

2ND Dept. App. Div. order of 12/20/07; modification and affirmance; leave to appeal granted by Smith, J., 4/2/08; CRIMES AND CRIMINAL PROCEDURE - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER THE SENTENCING COURT PROPERLY IMPOSED CONSECUTIVE SENTENCES FOR THE CRIMES OF CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AND FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE - PENAL LAW § 70.25(2);

Supreme Court, New York County convicted defendant of criminal sexual act in the third degree, falsifying business records in the first degree (four counts), forcible touching (three counts), attempted forcible touching (three counts) and bail jumping in the second degree, and sentenced him to an aggregate term of 4 to 12 years; App. Div. modified to the extent of vacating the supplemental sex offender fee and the provisions of the orders of protection that directed that they remain in effect until January 10, 2021, otherwise affirmed and remanded the matter for a new determination of the duration of the orders of protection.