

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 25 through May 1, 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.

FLUDD, MATTER OF v GOLDBERG &c., et al.:

1ST Dept. App. Div. order of 3/18/08; grant of CPLR article 78 petition;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHETHER A COURT THAT PRESIDED OVER A CRIMINAL PROCEEDING HAS INHERENT POWER TO ISSUE ORDERS AUTHORIZING THE DEPARTMENT OF CORRECTIONAL SERVICES TO PLACE AN INMATE IN SOLITARY CONFINEMENT AFTER THE CRIMINAL PROCEEDING HAS TERMINATED BY ENTRY OF JUDGMENT;

App. Div. granted a CPLR article 78 petition seeking to vacate and set aside orders of the Supreme Court, New York County, entered on March 13, 2006, September 29, 2006, December 5, 2006 and February 15, 2007, and directed that petitioner be released from indefinite confinement in the Special Housing Unit of Wende Correctional Facility.

KRAMER &c., et al. v W10Z/515 REAL ESTATE LIMITED PARTNERSHIP,
et al. (AND ANOTHER ACTION):

1ST Dept. App. Div. order of 10/16/07; modification and
affirmance; leave to appeal granted by App. Div., 4/15/08;
CONDOMINIUMS AND COOPERATIVES - OFFERING PLAN - DISCLOSURE OF
CONSTRUCTION PROBLEMS - WHETHER INDIVIDUAL COMMON LAW FRAUD
CLAIMS AGAINST CONDOMINIUM SPONSOR ARE BARRED BY THE MARTIN ACT
(GENERAL BUSINESS LAW ART. 23-A); CLAIM OF GROSS NEGLIGENCE
AGAINST SPONSOR;

Supreme Court, New York County denied the Kramer plaintiffs'
motion for leave to appeal to amend the complaint and Kerusa
plaintiff's motion to serve a second amended complaint; App. Div.
modified by permitting plaintiffs to assert claims for common-law
fraud and permitting plaintiff Kerusa Co. LLC to assert a claim
of gross negligence against defendant W10Z/515 Real Estate
Limited Partnership, and otherwise affirmed.

PERI, et al. v CITY OF NEW YORK:

1ST Dept. App. Div. order of 10/23/07; affirmance with dissents;
leave to appeal granted by App. Div., 4/10/08; Rule 500.11 review
pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - LEAD PAINT HAZARD -
WHETHER AFFIDAVIT IN OPPOSITION TO CITY OF NEW YORK'S MOTION FOR
SUMMARY JUDGMENT RAISED AN ISSUE OF FACT AS TO THE CITY'S ACTUAL
OR CONSTRUCTIVE NOTICE THAT A CHILD UNDER THE AGE OF SEVEN LIVED
IN THE CITY'S BUILDING; NOTICE OF CLAIM;

Supreme Court, Bronx County, among other things, granted partial
summary judgment to the City of New York to the extent of
dismissing all claims except those relating to plaintiffs' second
period of occupancy in its building, and granted plaintiffs'
cross motion to the extent of deeming later notices of claim
against the City timely served; App. Div. affirmed.