

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 18 through July 24, 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.

FERLUCKAJ v GOLDMAN, SACHS & CO.:

1ST Dept. App. Div. order of 7/15/08; modification and affirmance; leave to appeal granted by App. Div., 7/15/08; LABOR - SAFE PLACE TO WORK - TENANT'S LIABILITY UNDER LABOR LAW § 240(1) FOR INJURY SUSTAINED BY EMPLOYEE OF CLEANING SERVICES COMPANY WHILE PERFORMING WORK SPECIFIED IN THE CONTRACT BETWEEN THE CLEANING SERVICES COMPANY AND BUILDING OWNER; Supreme Court, New York County granted reargument and, granted Goldman, Sachs & Co. summary judgment dismissing plaintiff's Labor Law § 240(1) claim against it; App. Div. modified the 3/20/07 Supreme Court order to deny Goldman, Sachs & Co. summary judgment dismissing plaintiff's Labor Law § 240(1) claim against it and otherwise affirmed that order; and modified the 8/24/06 Supreme Court order to grant Goldman, Sachs & Co. summary judgment only to the extent of dismissing the claims pursuant to Labor Law §§ 200, 202, and 241(6) against it and otherwise affirmed that order.

JOHNSON v CHAPIN:

1ST Dept. App. Div. order of 3/13/08; modify; leave to appeal granted by App. Div., 7/8/08;
HUSBAND AND WIFE - DIVORCE - EQUITABLE DISTRIBUTION - CREDIT TO HUSBAND FOR CERTAIN PAYMENTS - WIFE'S ENTITLEMENT TO CREDIT FOR FIFTY PERCENT OF THE DIFFERENCE BETWEEN THE TOTAL MARITAL FUNDS EXPENDED ON RENOVATIONS TO HUSBAND'S SEPARATE PROPERTY AND THE PROPERTY'S APPRECIATED VALUE - REDUCTION OF WIFE'S SHARE OF ENHANCED VALUE OF HUSBAND'S SEPARATE PROPERTY;
Supreme Court, New York County awarded divorce and money judgment, distributing the parties' martial property and awarded plaintiff maintenance, child support and counsel fees; App. Div. modified, by reducing the wife's share of enhanced value of Claverack property, vacating the wife's credit for 50 percent of the difference between the sum expended on the Claverack renovations and the property's appreciated value, and recrediting husband for excess temporary maintenance payments and 50 percent of the mortgage and maintenance paid for the Fifth Avenue cooperative during the pendency of the divorce action.

COLUMBIA COUNTY PROBATION DEPARTMENT v BRITTNY MM:

3RD Dept. App. Div. order of 5/22/08; modify and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
INFANTS - PERSONS I NEED OF SUPERVISION - ALLEGED VIOLATIONS OF FAMILY COURT ACT ARTICLE 7 AND THE STATE AND FEDERAL CONSTITUTIONS - WHETHER FAMILY COURT HAD AUTHORITY TO ENTERTAIN A VIOLATION OF PROBATION PETITION AND ORDER AN APPROPRIATE DISPOSITION WHERE ALLEGED ACTS WERE COMMITTED AND PETITION WAS FILED AFTER PETITIONER'S 18TH BIRTHDAY;
Family Court, Columbia County granted petitioner's application in a proceeding pursuant to Family Court Act article 7, to revoke an order of probation and place respondent in the custody of the Columbia County Department of Social Services for a period of 12 months; App. Div. modified by reversing so much of the order as directed that respondent be placed in the custody of the Columbia County Department of Social Services and affirmed as so modified.

OHNMACHT v GOORD &c.:

3RD Dept. App. Div. order of 1/10/08; dismissal of CPLR article 78 petition;
PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION JUDGMENT CONFIRMING RESPONDENT'S DETERMINATION FINDING PETITIONER GUILTY OF ASSAULTING STAFF IN VIOLATION OF A PRISON DISCIPLINARY RULE;
App. Div. confirmed respondent's determination that found petitioner guilty of violating a prisoner disciplinary rule and dismissing the CPLR article 78 petition.

SELF, MATTER OF, v NEW YORK STATE DIVISION OF HUMAN RIGHTS:

3RD Dept. App. Div. order of 6/17/08; reconsideration and modify; sua sponte examination whether the appeal is timely taken from the March 25, 2008 order, the order appealed from finally determines the action or proceeding, and any jurisdictional basis exists to support an appeal as of right;

CHALLENGE TO ORDER OF SINGLE APPELLATE DIVISION JUSTICE DENYING PETITIONER'S MOTION FOR RECONSIDERATION OR REARGUMENT AND FOR MODIFICATION OF A PRIOR ORDER OF THAT JUSTICE DENYING PETITIONER'S MOTION FOR PERMISSION TO APPEAL TO THE APPELLATE DIVISION;

App. Div. denied the 3/25/08 order for permission to appeal to the App. Div. and modified the 6/6/08 order for reconsideration/reargument.

STATE FARM v WHITING, et al.:

4TH Dept. App. Div. order of 7/3/08; affirmance with dissents; Rule 500.11 review pending;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - WHETHER THE UNDERLYING INCIDENT WAS AN "OCCURRENCE" WITHIN THE MEANING OF THE SUBJECT INSURANCE POLICY;

Supreme Court, Orleans County granted plaintiff's cross motion for summary judgment seeking a declaration that plaintiff has no duty to defend or indemnify defendant Matthew Whiting in the underlying action; App. Div. affirmed.