

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 27 through April 2, 2009

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.

AWARDS.COM et al. v KINKO'S, INC., et al.:

Supreme Court judgment of 2/10/09, bringing up for review 1st Dept. App. Div. order of 4/19/07; modification and affirmance; sua sponte examination whether the 04/19/07 App. Div. order supports an appeal as of right pursuant to CPLR 5601(d);
CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - MATERIALITY OF DEFAULT - FAILURE TO MAKE ONE PAYMENT OF MONTHLY FEE - LOST PROFITS - PARTIES' CONTEMPLATION OF LOST PROFITS AS A POTENTIAL BASIS FOR DAMAGES IN THE EVENT OF BREACH - SPECULATIVE NATURE OF SUCH DAMAGES;

Supreme Court, New York County granted defendants' motion for summary judgment to the extent of dismissing the claims for fraud and lost profits; App. Div. modified by dismissing the complaint in its entirety and affirmed the order as so modified; thereafter, Supreme Court entered judgment on defendant Kinko's, Inc.'s counterclaim for breach of contract.

GORDON, et al. v TOWN OF ESOPUS et al.:

3rd Dept. App. Div. order of 2/26/09; reversal with dissents; sua sponte examination whether the dissent at the App. Div. is on a question of law to support an appeal as of right under CPLR 5601(a);

TAXATION - ASSESSMENT - RPTL 480-a - VALUATION;

Supreme Court, Ulster County granted petitioners' applications, in four proceedings pursuant to RPTL article 7, to challenge the tax assessments on certain real property owned by petitioners; App. Div. reversed the judgment, "on the facts," and dismissed the petitions.

MCGRANTHAM (JAMES), PEOPLE v:

2ND Dept. App. Div. order of 11/18/08; reversal; leave to appeal granted by Belen, J., 3/19/09; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - WHETHER, VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT THE INDICTMENT FOR THE CRIMES OF CRIMINALLY NEGLIGENT HOMICIDE AND RECKLESS DRIVING - DRIVING A VEHICLE IN THE WRONG DIRECTION ONTO AN EXIT RAMP LEADING FROM A HIGHWAY;

Supreme Court, Kings County, among other things, granted those branches of defendant's motion which were to dismiss counts one and two of the indictment, charging him with criminally negligent homicide and reckless driving; App. Div. reversed, denied those branches of defendant's motion which were to dismiss counts one and two of the indictment and reinstated those counts.

MILL RIVER CLUB, INC., MATTER OF v NEW YORK STATE DIVISION OF HUMAN RIGHTS:

1ST Dept. App. Div. judgment of 2/10/09; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CIVIL RIGHTS - DISCRIMINATION IN PUBLIC ACCOMMODATION - DISCRIMINATION BASED ON RELIGION - COUNTRY CLUB'S MEMBERSHIP ADMISSIONS POLICY - CLUB'S STATUS AS A PUBLIC ACCOMMODATION OR "DISTINCTLY PRIVATE" ORGANIZATION WITHIN THE MEANING OF EXECUTIVE LAW § 292(9) - ALLEGED VIOLATION OF CLUB'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO ENGAGE IN EXPRESSIVE ASSOCIATION AND TO INTIMATE ASSOCIATION; ADMINISTRATIVE LAW - CONSIDERATION OF EVIDENCE SUBMITTED AFTER HEARING - 12 NYCRR 465.17; STANDING; App. Div. confirmed a 12/26/06 determination which, after a hearing, found, among other things, that petitioner's membership admissions policy discriminated against applicants on the basis of creed in violation of Executive Law § 296(2)(a); denied the petition challenging that determination; and dismissed the Executive Law § 298 proceeding.

WAHAB v WAHAB:

2ND Dept. App. Div. order of 2/24/09; affirmance; sua sponte examination whether (1) any jurisdictional basis exists for a direct appeal from the Supreme Court orders and judgment pursuant to CPLR 5601(b)(2), whether such appeal was timely taken and whether the Supreme Court orders finally determine the action within the meaning of the Constitution and (2) a substantial constitutional question exists to support an appeal as of right from the App. Div. order;

HUSBAND AND WIFE - DIVORCE - CHALLENGE TO SUPREME COURT ORDERS AND JUDGMENT AND APPELLATE DIVISION ORDER ENTERED IN DIVORCE ACTION;

Supreme Court, Suffolk County orders granting plaintiff's motion for leave to serve an amended complaint, plaintiff's motion for an order determining that the marital residence is marital property subject to equitable distribution, and adjourning the trial until May 3, 2005; Supreme Court judgment of divorce which, among other things, awarded plaintiff wife custody of the parties' children and equitably distributed the marital assets; App. Div. affirmed the judgment.

WILSON (DESIRIE), PEOPLE v:

1ST Dept. App. Div. order of 2/3/09; affirmance with dissents; leave to appeal granted by Freedman, J., 3/17/09;

CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION OF ATTEMPTED AGGRAVATED HARASSMENT IN THE SECOND DEGREE; CLAIMED IMPROPRIETY IN TRANSFER OF CASE FROM CRIMINAL COURT TO SUPREME COURT; SUBJECT MATTER JURISDICTION OF TRIAL COURT;

Supreme Court, Bronx County convicted defendant of attempted aggravated harassment in the second degree, and sentenced her to a conditional discharge for a period of one year; App. Div. affirmed.