

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 10 through April 16, 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.

ASHLAND MANAGEMENT, INC. v ALTAIR INVESTMENTS NA, LLC et al.:
1ST Dept. App. Div. order of 12/23/08; affirmance with dissents;
leave to appeal granted by App. Div., 3/31/09;
MASTER AND SERVANT - ENFORCEABILITY OF CONFIDENTIALITY AGREEMENT
IN EMPLOYMENT CONTRACT - BREACH OF FIDUCIARY DUTY;
Supreme Court, New York County granted defendants' motion for
summary judgment solely to the extent of dismissing the fifth and
sixth causes of action; App. Div. affirmed.

GODFREY v SPANO:

2ND Dept. App. Div. order of 12/30/08; affirmance; leave to appeal granted by Court of Appeals, 3/31/09;
MARRIAGE - SAME-SEX MARRIAGE - MUNICIPAL CORPORATIONS - TAXPAYER ACTION - WHETHER WESTCHESTER COUNTY EXECUTIVE ORDER REQUIRING COUNTY AGENCIES TO RECOGNIZE OUT-OF-STATE SAME SEX-MARRIAGES IS ILLEGAL, UNCONSTITUTIONAL AND RESULTS IN THE UNLAWFUL DISBURSEMENT OF PUBLIC FUNDS;
Supreme Court, Westchester County granted Westchester County Executive's cross motion to dismiss the complaint for failure to state a cause of action and declared that County Executive Order No. 3 of 2006 is "a valid exercise of the County Executive's power, not an illegal act, and does not violate the State Constitution or the Municipal Home Rule Law"; App. Div. affirmed.

LEWIS, et al. v NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, et al.:

3RD Dept. App. Div. order of 1/22/09; affirmance; leave to appeal granted by Court of Appeals, 3/31/09;
MARRIAGE - SAME-SEX MARRIAGE - MUNICIPAL CORPORATIONS - TAXPAYER ACTION - WHETHER NEW YORK STATE DEPARTMENT OF CIVIL SERVICE'S RECOGNITION OF OUT-OF-STATE SAME-SEX MARRIAGES IS ILLEGAL, UNCONSTITUTIONAL AND RESULTS IN THE UNLAWFUL DISBURSEMENT OF PUBLIC FUNDS;
Supreme Court, Albany County granted a motion to intervene, denied plaintiffs' motion for summary judgment, granted summary judgment in favor of defendants and dismissed the complaint; App. Div. affirmed.

RACEPOINT PARTNERS, LLC, et al. v JPMORGAN CHASE BANK, N.A.:

1ST Dept. App. Div. order of 12/23/08; reversal; leave to appeal granted by Court of Appeals, 3/31/09;
CONTRACTS - BREACH OR PERFORMANCE OF CONTRACT - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT AN INDENTURE AGREEMENT "REQUIRED ENRON TO FILE WITH THE INDENTURE TRUSTEE COPIES OF THE INFORMATION, DOCUMENTS AND OTHER REPORTS IT FILED WITH THE SEC" AND "DID NOT REQUIRE ENRON TO FILE WITH THE INDENTURE TRUSTEE FINANCIAL STATEMENTS THE CONTENTS OF WHICH COMPLY WITH FEDERAL SECURITIES LAW";
Supreme Court, New York County denied defendant's pre-answer motion to dismiss the complaint; App. Div. reversed, granted defendant's motion, dismissed the complaint and directed the Clerk to enter judgment accordingly.

ROBERTS, et al. v TISHMAN SPEYER PROPERTIES, L.P., et al.:

1ST Dept. App. Div. order of 3/5/09; reversal; leave to appeal granted by App. Div., 4/7/09;

LANDLORD AND TENANT - RENT REGULATION - LUXURY DECONTROL PROVISIONS OF RENT STABILIZATION LAW - RECEIPT OF TAX BENEFITS PURSUANT TO REAL PROPERTY TAX LAW § 489 ("J-51 BENEFITS") - WHETHER THE EXCEPTION TO LUXURY DECONTROL FOR PROPERTIES RECEIVING J-51 BENEFITS APPLIES ONLY WHEN AN APARTMENT IS SUBJECT TO RENT STABILIZATION "SOLELY BY VIRTUE OF" THE RECEIPT OF J-51 BENEFITS;

Supreme Court, New York County dismissed the complaint; App. Div. reversed and reinstated the complaint.

WADE, MATTER OF v ARTUS, et al.:

3RD Dept. App. Div. order of 2/11/09; sua sponte examination whether there is any jurisdictional basis for an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSIONER'S DETERMINATION OF GUILT WITH RESPECT TO THE CHARGE OF POSSESSION OF A WEAPON; CLAIMED DUE PROCESS VIOLATIONS;

App. Div. confirmed determination of respondent Commissioner of Correctional Services finding petitioner guilty of violating a certain prison disciplinary rule, and dismissed the petition.

WILLIAMS (DARRELL), PEOPLE v:

1ST Dept. App. Div. order of 2/5/09; affirmance; leave to appeal granted by Read, J., 4/3/09;

CRIMES AND CRIMINAL PROCEDURE - POST-RELEASE SUPERVISION (PRS) - WHETHER A TRIAL COURT IS AUTHORIZED TO CORRECT A PRIOR FAILURE TO IMPOSE PRS BY RESENTENCING A DEFENDANT TO PRS AFTER HIS ORIGINALLY IMPOSED SENTENCE HAS BEEN FULLY SERVED - ALLEGED VIOLATION OF DOUBLE JEOPARDY AND DEFENDANT'S DUE PROCESS RIGHTS;

Supreme Court, New York County resentenced defendant to a term of three years with three years' post-release supervision; App. Div. affirmed.

