

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**April 17 through April 23, 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.**

BORDELEAU, et al., MATTER OF v STATE OF NEW YORK, et al.:  
Supreme Court, Albany County order of 3/5/09; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);  
STATE - APPROPRIATIONS - DECLARATORY JUDGMENT ACTION SEEKING TO ENJOIN DEFENDANTS FROM DISTRIBUTING OR RECEIVING STATE FUNDS APPROPRIATED IN THE NEW YORK STATE BUDGET IN PURPORTED VIOLATION OF THE NEW YORK STATE CONSTITUTION - FUNDING OF ECONOMIC DEVELOPMENT PROGRAMS THROUGH THE URBAN DEVELOPMENT CORPORATION AND THE DEPARTMENT OF AGRICULTURE AND MARKETS;  
Supreme Court granted defendants' motions to dismiss the complaint.

THE CITY OF NEW YORK, et al., MATTER OF v THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 10/16/08; reversal; leave to appeal granted by Court of Appeals, 4/7/09;

LABOR UNIONS - COLLECTIVE BARGAINING - NEW YORK CITY POLICE DEPARTMENT'S CHANGE OF METHOD OF RANDOM DRUG SCREENING FOR EMPLOYEES FROM URINE TESTING TO HAIR TESTING - WHETHER CHOICE OF METHOD OF RANDOM DRUG TESTING FOR POLICE OFFICERS IS EXCLUDED FROM COLLECTIVE BARGAINING;

Supreme Court, New York County granted a CPLR article 78 petition and annulled the determination of respondent New York City Board of Collective Bargaining, which found that petitioners violated the collective bargaining agreement with respondent unions; App. Div. reversed, denied the petition, reinstated the determination of the Board of Collective Bargaining and dismissed the proceeding.

FIGUEROA (MICHAEL), PEOPLE:

1<sup>ST</sup> Dept. App. Div. order of 2/21/08; affirmance; leave to appeal granted by Jones, J., 4/2/09;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO BE PRESENT AT MATERIAL STAGE OF PROCEEDINGS - JUDGE'S COMMUNICATION WITH JURY FOREPERSON WHO SENT NOTE TO JUDGE INDICATING THAT HE DID NOT FEEL COMFORTABLE ABOUT READING THE VERDICT - CPL 310.30;

Supreme Court, Bronx County convicted defendant, after a jury trial, of two counts of robbery in the second degree and criminal possession of a weapon in the fourth degree, and sentenced him, as a second felony offender, to an aggregate term of 12 years; App. Div. affirmed.

HIRSCHFELD, &c. v TELLER:

2<sup>ND</sup> Dept. App. Div. order of 4/15/08; affirmance; leave to appeal granted by Court of Appeals, 4/7/09;

HEALTH - NURSING HOMES - MENTAL HYGIENE LEGAL SERVICE'S RIGHT OF ACCESS TO PATIENTS WITH A PRIMARY DIAGNOSIS OF MENTAL ILLNESS WHO RESIDE IN NEUROBIOLOGICAL UNITS OF DEFENDANT NURSING HOMES - MENTAL HYGIENE LAW § 47.01;

Supreme Court, Nassau County denied plaintiff's motion for summary judgment and granted defendants' cross motion for summary judgment; App. Div. affirmed and remitted to Supreme Court for, among other things, entry of judgment declaring Mental Hygiene Legal Service's right of access.

HOTEL 71 MEZZ LENDER, LLC v FALOR et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/16/08; reversal and modification; leave to appeal granted by App. Div., 3/19/09;

ATTACHMENT - WHEN REMEDY AVAILABLE - ATTACHMENT OF FOREIGN INTANGIBLE ASSETS - NONDOMICILIARY DEFENDANTS'

OWNERSHIP/MANAGEMENT INTERESTS IN VARIOUS OUT-OF-STATE LIMITED LIABILITY COMPANIES - SERVICE UPON PROPER GARNISHEE WHILE TEMPORARILY LOCATED IN NEW YORK; RECEIVERS - APPOINTMENT OF RECEIVER OF DEFENDANTS' INTERESTS IN FOREIGN ENTITIES WHERE DEFENDANT-DEBTORS HAD SUBMITTED TO PERSONAL JURISDICTION IN NEW YORK;

Supreme Court, New York County granted plaintiff an ex parte order of attachment (the 9/25/07 order) and thereafter granted plaintiff's motion to confirm an order of attachment (the 2/8/08 order); the same court, in an order and supplemental order, both entered 4/7/08, among other things, granted plaintiff's motion for the appointment of a receiver and authorized the receiver to exercise dominion and control over certain designated property; App. Div. reversed the 2/8/08 order, denied plaintiff's motion to confirm the order of attachment, vacated the 9/25/07 order, modified the 4/7/08 order and supplemental order by vacating them except for the tenth decretal paragraph of the supplemental order, which restrains defendants from disposing of or diverting their ownership/management interests in certain designated entities, and otherwise affirmed the 4/7/08 order and supplemental order.

JUSTICE, MATTER OF v KING:

4<sup>th</sup> Dept. App. Div. order of 3/27/09; reversal and dismissal; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

DISCLOSURE - FREEDOM OF INFORMATION LAW - CPLR ARTICLE 78 PROCEEDING TO COMPEL THE EXECUTIVE DIRECTOR OF SAVING GRACE MINISTRIES, INC. (SGM), A TAX-EXEMPT NONPROFIT WITH GOVERNMENT CONTRACTS, TO PROVIDE CERTAIN DOCUMENTS PURSUANT TO THE FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW, ARTICLE 6) - WHETHER SGM IS AN "AGENCY" WITHIN THE MEANING OF PUBLIC OFFICERS LAW § 86(3) AND THUS SUBJECT TO FOIL REQUIREMENTS;

Supreme Court, Erie County directed respondent to provide certain documents to petitioner pursuant to FOIL; App. Div. reversed and dismissed the petition.

MALDONADO (RICHARD), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 1/23/09; dismissal of appeal; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL ON THE GROUND THAT THE SUPREME COURT ORDER IS NOT APPEALABLE BY RIGHT AND LEAVE TO APPEAL HAD NOT BEEN GRANTED - DEFENDANT ASSERTS UNDERLYING ISSUE CONCERNING POST-RELEASE SUPERVISION AS A SENTENCE COMPONENT AFTER A GUILTY PLEA;

Supreme Court, Queens County denied defendant's motion to vacate his judgment of conviction; App. Div. dismissed the appeal on the ground that the order is not appealable by right and leave to appeal had not been granted.

POTTER, MATTER OF v TOWN BOARD OF TOWN OF AURORA AND ANOTHER PROCEEDING:

4<sup>th</sup> Dept. App. Div. orders of 3/20/09; affirmances; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right with respect to the March 20, 2009 App. Div. order affirming a March 19, 2008 Supreme Court judgment and the March 20, 2009 App. Div. order affirming a September 16, 2008 Supreme Court judgment;

CONSTITUTIONAL LAW - ALLEGED VIOLATION OF NEW YORK CONSTITUTION, ARTICLE VIII, § 2 - WHETHER PURCHASE AND REMODELING OF BUILDING FOR RELOCATION OF TOWN HALL CONSTITUTES A "TOWN PURPOSE" WHERE THE BUILDING HAS EXCESS SPACE THAT WILL BE LEASED TO PRIVATE ENTITIES; ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL QUALITY REVIEW - ALLEGED SEQRA VIOLATIONS - WHETHER TOWN BOARD TIMELY CONSIDERED ENVIRONMENTAL FACTORS, "IDENTIFIED THE RELEVANT AREAS OF ENVIRONMENTAL CONCERN, TOOK A 'HARD LOOK' AT THEM, AND MADE A 'REASONABLE ELABORATION' OF THE BASIS OF [ITS] DETERMINATION"; Supreme Court, Erie County dismissed a CPLR article 78 petition (the 3/19/08 judgment) and thereafter dismissed a petition/complaint filed in a combined CPLR article 78 proceeding and declaratory judgment action (the 9/16/08 judgment); App. Div., in separate orders, affirmed the 3/19/08 and 9/16/08 judgments.

SAN MARCO, et al. v VILLAGE/TOWN OF MOUNT KISCO:

2<sup>ND</sup> Dept. App. Div. order of 12/23/08; reversal; leave to appeal granted by App. Div., 3/20/09; Rule 500.11 review pending; NEGLIGENCE - SNOW AND ICE - LIABILITY OF MUNICIPALITY FOR PERSONAL INJURIES SUSTAINED IN PLAINTIFF'S SLIP AND FALL ON BLACK ICE ON SURFACE OF MUNICIPAL PARKING LOT; SUMMARY JUDGMENT; Supreme Court, Westchester County denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed and granted defendant's motion for summary judgment dismissing the complaint.

WEST HARLEM BUSINESS GROUP, MATTER OF v EMPIRE STATE DEVELOPMENT CORPORATION:

1<sup>ST</sup> Dept. App. Div. order of 7/15/08; modification; leave to appeal granted by Court of Appeals, 4/7/09; DISCLOSURE - FREEDOM OF INFORMATION LAW - CPLR ARTICLE 78 PROCEEDING CHALLENGING THE DETERMINATION OF RESPONDENT EMPIRE STATE DEVELOPMENT CORPORATION THAT CERTAIN AGENCY DOCUMENTS WERE EXEMPT FROM DISCLOSURE UNDER NEW YORK'S FREEDOM OF INFORMATION LAW (FOIL) (PUBLIC OFFICERS LAW, ARTICLE 6); ATTORNEY-CLIENT PRIVILEGE - WORK PRODUCT PRIVILEGE; Supreme Court, New York County granted petitioner's FOIL application to compel respondent to release certain documents; App. Div. modified by denying the applications for documents in sections III and V of the FOIL request and vacated the portions of the order requiring disclosure of those documents.