

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**June 19 through June 25, 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.**

BIKMAN, MATTER OF v NEW YORK CITY LOFT BOARD:

1<sup>ST</sup> Dept. App. Div. order of 12/30/08; affirmance; leave to appeal granted by Court of Appeals, 6/9/09;  
LANDLORD AND TENANT - LOFT LAW - WHETHER THE RIGHT TO SELL IMPROVEMENTS UNDER MULTIPLE DWELLING LAW § 286(6) EXTENDS TO THE ESTATE OF A DECEASED TENANT;  
Supreme Court, New York County, among other things, granted a CPLR article 78 petition to annul respondent's determination granting the owner's abandonment application and denying petitioner's application for reimbursement of the fixtures installed and improvements made in the subject loft by petitioner's decedent, and remanded for an appraisal of the fixtures and improvements; App. Div. affirmed.

GOLDSTEIN, et al., MATTER OF v NEW YORK STATE URBAN DEVELOPMENT CORPORATION &c.:

2<sup>ND</sup> Dept. App. Div. judgment of 5/12/09; confirmation of determination;

EMINENT DOMAIN - PUBLIC USE - ATLANTIC YARDS REDEVELOPMENT PROJECT - EDPL 207 - VARIOUS CONSTITUTIONAL CHALLENGES TO CONDEMNATION DETERMINATION - ARTICLE I, § 7 AND ARTICLE XVIII, § 6 OF THE NEW YORK STATE CONSTITUTION;

App. Div. confirmed respondent's determination to acquire petitioners' properties by condemnation.

M ENTERTAINMENT, INC., et al. v LEYDIER, et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/28/09; affirmance in part and dismissal of appeal in part with dissents; Rule 500.11 review pending;

APPEAL - DISMISSAL - DISMISSAL OF APPEAL FOR UNTIMELY SERVICE OF NOTICE OF APPEAL - NOTICE OF APPEAL MAILED FROM OUT OF STATE - CPLR 2103(f)(1);

Supreme Court, New York County dismissed the complaint; App. Div. affirmed the Supreme Court judgment to the extent it dismissed the complaint as against defendants Wardrop and Thompson, and dismissed the appeal to the extent it sought review of the dismissal of the complaint as against defendant Leydier.

MCBRIDE (NORMAN), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/3/09; affirmance; leave to appeal granted by Ciparick, J., 6/12/09;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER SUPPRESSION COURT ERRED IN FAILING TO DETERMINE VALIDITY OF WARRANTLESS ENTRY INTO APARTMENT PURSUANT TO PRIMARY MOTIVATION TEST SET FORTH IN PEOPLE v MITCHELL (39 NY2d 173 [1976]) - VALIDITY OF MITCHELL IN LIGHT OF BRIGHAM CITY v STUART (547 US 398 [2006]) - POLICE-CREATED EXIGENCY; CHALLENGE TO IDENTIFICATION TESTIMONY AS PRODUCT OF UNDULY SUGGESTIVE LINEUP;

Supreme Court, New York County convicted defendant of attempted robbery in the second degree and sentenced him, as a persistent violent felony offender, to a term of 14 years to life; App. Div. affirmed.

NATION, MATTER OF v CITY OF NEW YORK:

1<sup>ST</sup> Dept. App. Div. order of 3/10/09; modification; leave to appeal granted by Court of Appeals, 6/11/09;

STATUTES - RETROACTIVE APPLICATION OF STATUTE - WHETHER FORMER SECTION 26-124(c) OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, WHICH PERMITTED THE COMMISSIONER OF THE DEPARTMENT OF BUILDINGS TO "REFUSE TO ACCEPT ANY APPLICATION OR OTHER DOCUMENT ... THAT BEARS THE SIGNATURE OF ANY PERSON WHO HAS BEEN FOUND ... TO HAVE ... NEGLIGENTLY MADE A FALSE STATEMENT," WAS PENAL AND THEREFORE COULD NOT BE APPLIED RETROACTIVELY AGAINST PETITIONER FOR ACTS COMMITTED PRIOR TO ITS PROMULGATION;

Supreme Court, New York County transferred the CPLR article 78 proceeding to App. Div.; App. Div. modified respondent Commissioner of Department of Buildings' (DOB) determination that, after a hearing, revoked petitioner's professional certification privileges pursuant to 1 RCNY 21-02 and refused to accept any application or other document submitted by petitioner to DOB, pursuant to Administrative Code of the City of New York § 26-124(c), for two years effective January 15, 2008, to be followed by a three-year probationary period, to the extent of vacating the penalty imposed pursuant to Administrative Code § 26-124(c).

TRUPIA et al. v LAKE GEORGE CENTRAL SCHOOL DISTRICT, et al.:

3<sup>RD</sup> Dept. App. Div. order of 3/5/09; reversal; leave to appeal granted by App. Div., 6/19/09;

NEGLIGENCE - ASSUMPTION OF RISK - CHILD INJURED DURING SLIDE DOWN STAIRWAY BANNISTER DURING SUMMER SCHOOL PROGRAM; PLEADINGS - AFFIRMATIVE DEFENSE;

Supreme Court, Warren County granted defendants' motion for leave to amend their answer to include the affirmative defense of primary assumption of risk; App. Div. reversed, and denied defendants' motion.

ZONA (JOSHUA M.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 3/20/09; reversal; leave to appeal granted by Graffeo, J., 6/10/09;

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER TRIAL COURT ERRED IN DECLINING TO INSTRUCT THE JURY ON THE CLAIM OF RIGHT DEFENSE ASSERTED BY DEFENDANT - PENAL LAW § 155.15(1); LARCENY;

Seneca County Court convicted defendant, upon a jury verdict, of petit larceny; App. Div. reversed and granted new trial.

