

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

February 26 through March 4, 2010

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. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after the filing of respondent's brief.

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.

ACEVEDO et al. v THE PIANO BUILDING LLC, et al.:

1ST Dept. App. Div. order of 12/10/09; affirmance; leave to appeal granted by App. Div., 2/9/10;

LANDLORD AND TENANT - RENT REGULATION - WHETHER AN APARTMENT COVERED BY THE LOFT LAW MAY REVERT TO RENT STABILIZATION AFTER THE LANDLORD PURCHASED THE PRIOR OCCUPANT'S RIGHTS UNDER MULTIPLE DWELLING LAW § 286(12) IN A PRE-1974 BUILDING CONTAINING SIX OR MORE RESIDENTIAL UNITS - WOLINSKY v KEE YIP REALTY CORP.
(2 NY3d 487 [2004]);

Supreme Court, New York County, among other things, granted plaintiff Rosenthal's motion for summary judgment and declared his unit subject to rent stabilization pursuant to the Emergency Tenant Protection Act of 1974; App. Div. affirmed.

BROWN, MATTER OF v FISCHER et al.:

3RD Dept. App. Div. order of 6/26/09; grant of motion to dismiss appeal; sua sponte examination whether there is any jurisdictional basis for an appeal as of right; APPEALS - APPELLATE DIVISION - DISMISSAL OF APPEAL; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION BY PRISON OFFICIALS; Supreme Court, Albany County granted respondents' motion to dismiss the CPLR article 78 petition to challenge a determination purportedly made by respondents to house petitioner in the prison infirmary and keep him out of the general prison population; App. Div. granted respondents' motion to dismiss the appeal.

MOORE &c., et al. v CITY OF NEW YORK, et al.:

2ND Dept. App. Div. order of 12/15/09; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPAL CORPORATIONS - TORT LIABILITY - POLICE - ACTION FOR DAMAGES FOR CIVIL RIGHTS VIOLATIONS PURSUANT TO 42 USC § 1983 - POLICE DEPARTMENT'S FAILURE TO HAVE POLICY LIMITING OVERTIME; Supreme Court, Kings County issued judgment in favor of defendants and against plaintiff, in effect, dismissing the amended complaint in an action to recover damages for civil rights violations pursuant to 42 USC § 1983; App. Div. affirmed.

RIVERA &c., et al. v KLEINMAN, et al.:

1ST Dept. App. Div. order of 11/10/09; affirmance; leave to appeal granted by Court of Appeals, 2/23/10; PHYSICIANS AND SURGEONS - MEDICAL MALPRACTICE - FAILURE TO FOLLOW DOCTOR'S ADVICE AS SUPERSEDING CAUSE OF INJURY; SUMMARY JUDGMENT; Supreme Court, Bronx County granted defendants' motions for summary judgment dismissing the complaint; App. Div. affirmed.

SINGH v THE CITY OF NEW YORK DIVISION OF HOUSING PRESERVATION AND DEVELOPMENT:

1ST Dept. App. Div. order of 3/17/09; affirmance; sua sponte examination whether the App. Div. order finally determines the action and whether any jurisdictional basis exists to support an appeal as of right; JUDGMENTS - COLLATERAL ESTOPPEL; DENIAL OF MOTION FOR RENEWAL; Supreme Court, Bronx County denied plaintiff's motion for renewal of a prior order that had denied his motion for partial summary judgment for \$500,000 in damages and granted defendant's cross motion to dismiss the complaint; App. Div. affirmed.