

COURT OF APPEALS NEW FILINGS

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

**March 5 through March 11, 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.**

BLEECKER STREET TENANTS CORP. v BLEECKER JONES LLC, et al.:  
1<sup>ST</sup> Dept. App. Div. order of 6/23/09; reversal; leave to appeal granted by Court of Appeals, 2/23/10;  
LANDLORD AND TENANT - CHALLENGE TO RENEWAL OPTION CLAUSE IN LEASE AGREEMENT - WHETHER THE EXCEPTION TO THE PROHIBITION AGAINST REMOTE VESTING OF OPTIONS APPURTENANT TO A LEASE IS APPLICABLE TO THE SUBJECT RENEWAL OPTION CLAUSE; SUMMARY JUDGMENT;  
Supreme Court, New York County granted motion by the Bleeker Jones defendants for summary judgment dismissing the complaint and denied plaintiff's cross motion for summary judgment; App. Div. reversed, denied defendants' motion for summary judgment dismissing the complaint, and granted plaintiff's cross motion for summary judgment to the extent of declaring that the renewal options clause of the lease is void under EPTL 9-1.1(b) and that Bleeker Jones LLC and Bleeker Jones Leasing and their subtenants and/or assignees are month-to-month tenants.

CORREA (EDGAR), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/23/10; reversal; leave to appeal granted by Acosta, J., 2/24/10;

COURTS - CLAIMED IMPROPRIETY IN TRANSFER OF CASE FROM CRIMINAL COURT TO SUPREME COURT; SUBJECT MATTER JURISDICTION OF TRIAL COURT;

Supreme Court, Bronx County convicted defendant, after a nonjury trial, of harassment in the second degree, and sentenced him to a term of 15 days; App. Div. reversed and dismissed the misdemeanor information.

DaCRUZ et al v TOWMASTERS OF NEW JERSEY, INC., et al.:

Supreme Court stipulation of 10/28/09, bringing up for review 2<sup>nd</sup> Dept. App. Div. order of 10/17/05; reversal; leave to appeal granted by Court of Appeals, 2/23/10;

LIMITATIONS OF ACTIONS - WHETHER ONE PARTY'S SATISFACTION OF UNCONSOLIDATED LAWS § 7107'S CONDITION PRECEDENT TO SUIT (REQUIRING ACTIONS AGAINST THE PORT AUTHORITY TO BE COMMENCED WITHIN ONE YEAR OF ACCRUAL) SATISFIES THE CONDITION WITH RESPECT TO ALL PARTIES; AMENDED COMPLAINT - RELATION BACK TO THIRD-PARTY COMPLAINT; DISMISSAL AND NONSUIT;

Supreme Court, Kings County denied the motion of defendant Port Authority of New York and New Jersey to dismiss the complaint as against it; App. Div. reversed, granted the motion of defendant Port Authority of New York and New Jersey to dismiss the complaint, dismissed the complaint insofar as asserted against that defendant and severed the action against the remaining defendants; the parties stipulated to discontinue the action against remaining defendants.

FARKAS (ISIDORE), PEOPLE v:

2<sup>nd</sup> Dept. App. Div. order of 8/25/09; reversal; leave to appeal granted by Smith, J., 2/23/10;

CRIMES - RIGHT TO SPEEDY TRIAL - THEFT-RELATED CHARGES CONTAINED IN INDICTMENT FILED OVER ONE YEAR AFTER ISSUANCE TO DEFENDANT OF DESK APPEARANCE TICKET AND LATER FILING OF MISDEMEANOR COMPLAINT THAT CHARGED ONLY ASSAULT-RELATED CHARGES - WHETHER THEFT-RELATED CHARGES ARE BARRED BY CPL 30.30 BECAUSE OF THE LAPSE OF TIME BETWEEN THE ISSUANCE OF THE DESK APPEARANCE TICKET AND THE INDICTMENT;

Supreme Court, Kings County granted that branch of defendant's motion that was to dismiss counts one, two, three, four, seven and eight of the indictment pursuant to CPL 30.30; App. Div. reversed, denied defendant's motion to dismiss counts one, two, three, four, seven and eight of the indictment; reinstated those counts of the indictment; and remitted the matter for further proceedings.

FOOTE et al. v ALBANY MEDICAL CENTER HOSPITAL, et al.:

3<sup>RD</sup> Dept. App. Div. order of 12/3/09; reversal; leave to appeal granted by App. Div., 2/24/10;

DAMAGES - "WRONGFUL BIRTH" MEDICAL MALPRACTICE ACTION - WHETHER TRIABLE ISSUES OF MATERIAL FACT PRECLUDED THE GRANT OF SUMMARY JUDGMENT TO DEFENDANTS WHERE DEFENDANTS ARGUED THAT PLAINTIFFS FAILED TO ESTABLISH A LEGALLY COGNIZABLE INJURY BECAUSE ALL MEDICAL AND EDUCATIONAL SERVICES NEEDED BY THEIR SON ARE BEING PROVIDED TO THEM UNDER GOVERNMENT PROGRAMS;  
Supreme Court, Albany County granted defendants' motion for summary judgment dismissing the complaint; App. Div. reversed and remitted to Supreme Court for further proceedings not inconsistent with the court's decision.

HASSELL (WILLIAM), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/22/09; affirmance; leave to appeal granted by Read, J., 3/4/10; Rule 500.11 review pending;  
CRIMES - SENTENCE - RESENTENCE - ADDITION OF POST-RELEASE SUPERVISION TO SENTENCE AFTER DEFENDANT'S RELEASE FROM PRISON;  
Supreme Court, New York County resentenced defendant to a term of 3 1/2 years with 5 years' post-release supervision; App. Div. affirmed.

KELLY (ROBERT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 12/8/09; affirmance; leave to appeal granted by Ciparick, J., 3/2/10;  
JURY - DELIBERATIONS - AT TRIAL, COURT OFFICERS TEMPORARILY REMOVED ONE JUROR FROM JURY ROOM WITHOUT DIRECTING THE REMAINING JURORS TO REFRAIN FROM DELIBERATING UNTIL ALL JURORS WERE TOGETHER AGAIN; ALLEGED MODE OF PROCEEDINGS ERROR;  
Supreme Court, Kings County convicted defendant, after a jury trial, of robbery in the first degree and burglary in the first degree, and imposed sentence; App. Div. affirmed.

MOORE (ISHAM), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 10/6/09; affirmance; leave to appeal granted by Belen, J., 2/22/10; Rule 500.11 review pending;  
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - FAILURE TO REQUEST JUSTIFICATION CHARGE; LESSER INCLUDED OFFENSE - RECKLESS ASSAULT IN THE SECOND DEGREE;  
Supreme Court, Kings County convicted defendant, upon a jury verdict, of assault in the second degree, and imposed sentence; App. Div. affirmed.

SMITH (REMY), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/28/09; affirmance; leave to appeal granted by Jones, J., 3/2/10;  
CRIMES - JURORS - JURY INSTRUCTION - WHETHER THE TRIAL COURT ERRED IN INFORMING THE JURY "IF YOU FIND [THE VICTIM] WAS TRUTHFUL AND ACCURATE IN HER TESTIMONY TO YOU, HER TESTIMONY WITHOUT ANY OTHER EYEWITNESS TO WHAT HAPPENED INSIDE THE CAR, UNDER THE LAW SATISFIES THE PROOF BEYOND A REASONABLE DOUBT"; PRECLUSION OF CERTAIN ARGUMENT BY DEFENDANT'S COUNSEL IN SUMMATION;

Supreme Court, New York County convicted defendant, after a jury trial, of two counts of assault in the first degree, attempted coercion in the first degree and criminal possession of a weapon in the second degree, and sentenced her to an aggregate term of eight years; App. Div. affirmed.

THOMAS (CLYDE, JR.), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 10/29/09; affirmance; leave to appeal granted by Read, J., 3/4/10; Rule 500.11 review pending; CRIMES - SENTENCE - RESENTENCE - ADDITION OF POST-RELEASE SUPERVISION TO SENTENCE AFTER DEFENDANT'S RELEASE FROM PRISON; St. Lawrence County Court resentenced defendant to a term of 6 1/2 years with 5 years' post-release supervision; App. Div. affirmed.

TISLON, PEOPLE ex rel. v ROCK:

Supreme Court, Washington County order of 2/3/10; dismissal of petition; sua sponte examination whether basis exists for an appeal as of right pursuant to CPLR 5601(b)(2); HABEAS CORPUS - AVAILABILITY OF RELIEF; Supreme Court dismissed relator's habeas corpus petition.

