

COURT OF APPEALS NEW FILINGS

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

**April 16 through April 22, 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.**

MEADOWSWEET DAIRY, LLC, et al., MATTER OF v HOOKER &c., et al.:  
3<sup>RD</sup> Dept. App. Div. order of 3/11/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
AGRICULTURE - MILK CONTROL - PROCEEDING TO REVIEW DETERMINATION OF COMMISSIONER OF AGRICULTURE AND MARKETS FINDING THAT PETITIONER'S PRODUCTION OF RAW MILK AND RAW MILK PRODUCTS WAS SUBJECT TO REGULATION BY RESPONDENTS - AGRICULTURE AND MARKETS LAW - MILK PLANT PERMIT AND RAW MILK PERMIT;  
Supreme Court, Albany County dismissed petitioners' CPLR article 78 application to, among other things, review a determination of respondent Commissioner of Agriculture and Markets finding that petitioners' activity in producing raw milk and raw milk products was subject to regulation by respondents; App. Div. affirmed.

O'BRIEN v TOWN OF HUNTINGTON:

2<sup>ND</sup> Dept. App. Div. order of 8/11/09; reversal and denial of motion; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the App. Div. order finally determines the action within the meaning of the Constitution;  
DEEDS - DETERMINATION OF CLAIM TO REAL PROPERTY - CHALLENGE TO APPELLATE DIVISION RULING THAT TOWN HAD SUPERIOR TITLED TO VACANT LAND DERIVED FROM COLONIAL LAND GRANT PATENTS - PLAINTIFFS' CLAIMS PREMISED UPON DEEDS, CHAINS OF TITLE AND, IN CERTAIN CASES, TAX DEEDS;

Supreme Court, Suffolk County, judgment that, as relevant here, declared that plaintiffs, other than plaintiffs Thomas E. O'Brien and Evelyn E. O'Connell, have good, valid, absolute and unencumbered title in fee simple to eight of the subject parcels of real property, and that defendants' claims to the subject parcels are invalid, null and void; App. Div., as relevant here, reversed the judgment, granted defendants' motion pursuant to CPLR 4401 for judgment as a matter of law with respect to all nine of the subject parcels, awarded full and exclusive possession of the subject parcels to the Town of Huntington and Board of Trustees of the Town of Huntington, declared plaintiffs' claims to the subject parcels invalid, declared that plaintiffs and every person claiming under them are barred from asserting such claims to the subject parcels, and directed plaintiffs to forthwith quit and vacate the subject parcels; App. Div. also denied defendants' motion for summary reversal of stated portions of the judgment.

PHILLIPS (JAMES), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 12/15/09; affirmance; leave to appeal granted by Pigott, J., 4/8/10;  
CRIMES - FITNESS TO PROCEED TO TRIAL - DEFENDANT WITH BRAIN INJURY RESULTING FROM STROKES - APPLICABILITY OF PROTOCOLS ESTABLISHED IN PEOPLE v FRANCA BANDERA (33 NY2d 429 [1974]);  
Supreme Court, New York County convicted defendant of attempted murder in the second degree, assault in the first degree, two counts of aggravated criminal contempt, two counts of criminal contempt in the first degree, two counts of criminal possession of a weapon in the third degree, and menacing in the third degree, and sentenced him to an aggregate term of 16 years; App. Div. affirmed.

RODRIGUEZ (FREDDY), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 2/16/10; reversal; leave to appeal granted by McGuire, J., 4/15/10;  
CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JUSTIFICATION DEFENSE PURSUANT TO PENAL LAW § 35.05(2);

Supreme Court, Bronx County convicted defendant of manslaughter in the second degree, two counts of assault in the second degree, vehicular manslaughter in the second degree, two counts of vehicular assault in the second degree, and two counts of operating a motor vehicle while under the influence of alcohol, and sentenced him to an aggregate term of 6 to 15 years; App. Div. reversed and remanded the matter for a new trial.

SYRACUSE UNIVERSITY, MATTER OF v PROJECT ORANGE ASSOCIATES SERVICES CORP.:

4<sup>TH</sup> Dept. App. Div. order of 3/19/10; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
EMINENT DOMAIN - PUBLIC USE - CHALLENGE TO APPELLATE DIVISION ORDER ANNULING RESPONDENT'S DETERMINATION AUTHORIZING THE CONDEMNATION OF CERTAIN OF PETITIONER'S REAL PROPERTY - ALLEGED MISCONSTRUCTION OF PUBLIC USE CLAUSES IN FEDERAL AND STATE CONSTITUTIONS - TRANSPORTATION CORPORATIONS LAW § 11(3-a);  
App. Div. annulled the determination of respondent authorizing the condemnation of certain real property owned by petitioner and granted the EDPL 201 petition.