

COURT OF APPEALS NEW FILINGS

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

September 10 through September 16, 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.

BROWN (NADIRAH), PEOPLE v:

4th Dept. App. Div. order of 4/30/10; affirmance; leave to appeal granted by Pigott, J., 9/10/10;

CRIMES - ASSAULT - SUFFICIENCY OF EVIDENCE TO ESTABLISH THAT DEFENDANT ACTED RECKLESSLY - HOT WATER THROWN ON DEFENDANT'S NEPHEW; ALLEGED PROSECUTORIAL MISCONDUCT;

Erie County Court convicted defendant of assault in the second degree and endangering the welfare of a child, and imposed sentence; App. Div. affirmed.

CONGREGATION RABBINICAL COLLEGE OF TARTIKOV v THE TOWN OF RAMAPO:

2ND Dept. App. Div. order of 4/20/10; reversal; leave to appeal granted by Court of Appeals, 8/31/10;

TAXATION - EXEMPTIONS - WHETHER THE APPELLATE DIVISION ERRED IN DECLARING THAT PLAINTIFF RELIGIOUS CORPORATION'S REAL PROPERTY IS EXEMPT FROM REAL PROPERTY TAXATION PURSUANT TO RPTL 420-a(1) FOR CERTAIN TAX YEARS - OPERATION ON THE SUBJECT PROPERTY OF A FOR-PROFIT SUMMER CAMP FOR ORTHODOX JEWISH BOYS;

Supreme Court, Rockland County judgment declared that defendants properly revoked the tax exemption of the plaintiff's real property pursuant to Real Property Tax Law § 420-a(1) for tax years 2006, 2007 and 2008; App. Div. reversed and declared that the plaintiff's real property is exempt from real property taxation pursuant to Real Property Tax Law § 420-a(1) for tax years 2006, 2007 and 2008.

DOOMES v BEST TRANSIT, et al. (AND TWO RELATED ACTIONS):

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

STATUTES - FEDERAL PREEMPTION - WHETHER THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966 AND FEDERAL MOTOR VEHICLE SAFETY STANDARD 208 PREEMPT STATE LAW TORT CLAIMS AGAINST BUS MANUFACTURER FOR FAILURE TO EQUIP BUS WITH PASSENGER SEATBELTS - WHETHER SUFFICIENT EVIDENCE IN THE RECORD SUPPORTED JURY'S FINDING THAT BUS MANUFACTURER WAS LIABLE FOR ACCIDENT BASED UPON ITS LENGTHENING OF BUS CHASSIS, THEREBY CREATING AN IMPROPER DISTRIBUTION OF WEIGHT;

Supreme Court, Bronx County awarded plaintiffs damages for pain and suffering as against defendant Warrick Industries, Inc. (doing business as Goshen Coach); App. Div. reversed, dismissed the complaint as against defendant Warrick Industries, Inc. and directed the Clerk to enter judgment accordingly.

GUNTLOW v BARBERA, et al.:

3RD Dept. App. Div. order of 8/19/10; modification with dissents; sua sponte examination whether the order finally determines the action within the meaning of the Constitution;

FALSE ARREST - MALICIOUS PROSECUTION - CLAIMS UNDER 42 USC § 1983 - CAUSE OF ACTION FOR ASSAULT AND BATTERY - PROBABLE CAUSE - SUMMARY JUDGMENT - EXISTENCE OF TRIABLE ISSUES OF FACT;

Supreme Court, Albany County granted motions by defendants Barbera, City of Albany, Albany Police Department, Anthony Ryan and Anthony Battuello for summary judgment dismissing the complaint against them; App. Div. modified by reversing so much of the order as granted the motions for summary judgment dismissing (1) that part of the first cause of action alleging a violation of 42 USC § 1983 against defendants Barbera, Ryan and Battuello, and (2) the third, fourth and fifth causes of action; denied the motions to that extent; and affirmed the order as so modified.

RICHARDSON, MATTER OF v BOUCAUD:

3RD Dept. App. Div. order of 7/15/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - CHALLENGE TO SPECIAL CONDITION OF PAROLE PROHIBITING PETITIONER FROM CONTACTING HIS WIFE - APPELLATE DIVISION ORDER HOLDING THAT HABEAS CORPUS RELIEF WAS UNAVAILABLE BECAUSE PETITIONER WAS NOT ENTITLED TO IMMEDIATE RELEASE INASMUCH AS HE WAS INCARCERATED, AT LEAST IN PART, DUE TO HIS VIOLATION OF A PAROLE CONDITION REQUIRING HIM TO PROCEED DIRECTLY TO THE AREA TO WHICH HE WAS RELEASED;

Supreme Court, Clinton County dismissed petitioner's application for a writ of habeas corpus; App. Div. affirmed.

RIVERS (SHERMAN), PEOPLE v:

2ND Dept. App. Div. order of 6/8/10; modification; leave to appeal granted by Ciparick, J., 9/1/10;

CRIMES - HARMLESS AND PREJUDICIAL ERROR - MOLINEAUX ERROR - FIRE MARSHAL'S TESTIMONY REGARDING THE ORIGIN OF A FIRE;

Supreme Court, Kings County convicted defendant of three counts of arson in the first degree and imposed sentence; App. Div. modified by vacating the sentences imposed on the convictions of arson in the first degree under counts five and six of the indictment, affirmed the judgment as so modified and remitted to Supreme Court for resentencing on those convictions.