

COURT OF APPEALS NEW FILINGS

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

November 19 through November 25, 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.

AMERICAN AIRLINES, INC., MATTER OF v NEW YORK CITY TAX APPEALS TRIBUNAL, et al.:

1ST Dept. App. Div. order of 10/14/10; confirmed administrative decision; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - HOTEL AND MOTEL OCCUPANCY TAX - NEW YORK CITY TAX APPEALS TRIBUNAL FINDING THAT PETITIONER WAS NOT PERMANENT RESIDENT WITH RESPECT TO THE HOTEL ROOMS IT OCCUPIED FOR LESS THAN 180 CONSECUTIVE DAYS - ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 11-2502(b)(1);

App. Div. confirmed respondent's 6/29/09 decision sustaining the notice of disallowance of petitioner's claim for a refund of Hotel Room Occupancy Tax for the period 7/1/02 through 6/30/03, denied the petition and dismissed the proceeding.

BEAZER v NEW YORK CITY HEALTH AND HOSPITALS CORP., et al.:

1ST Dept. App. Div. order of 8/3/10; affirmance with dissents;
leave to appeal granted by App. Div., 11/9/10;

NEGLIGENCE - DUTY - DUTY OF BAILOR TO BAILEE - PERSONAL INJURY
ACTION ARISING FROM INJURIES PLAINTIFF SUSTAINED WHILE USING
ALLEGEDLY DEFECTIVE, UNGUARDED POWER GRINDER OWNED BY DEFENDANT
CONTRACTOR ON A PROJECT FOR WHICH PLAINTIFF'S EMPLOYER SERVED AS
CONSTRUCTION MANAGER - EXISTENCE OF MATERIAL ISSUES OF FACT AS TO
WHETHER THERE WAS A BAILMENT OF THE GRINDER AND, IF SO, WHETHER
THE BAILMENT WAS GRATUITOUS OR FOR MUTUAL BENEFIT - DEFENDANT'S
ENTITLEMENT TO SUMMARY JUDGMENT;

Supreme Court, New York County, among other things, denied
defendant Bey Contracting, Inc.'s motion for summary judgment
dismissing the common-law negligence cause of action as against
it; App. Div. affirmed.

BOARD OF EDUCATION OF THE GARRISON UNION FREE SCHOOL DISTRICT v
GREEK ARCHDIOCESE OF INSTITUTE OF ST. BASIL:

2ND Dept. App. Div. order of 7/20/10; affirmance; leave to appeal
granted by App. Div., 11/12/10;

SCHOOLS - TUITION FOR NONRESIDENTS - RESPONSIBILITY OF SCHOOL
DISTRICT FOR COSTS OF EDUCATING CHILDREN WHO ARE NOT RESIDENTS OF
THE SCHOOL DISTRICT BUT ARE PLACED AT A PRIVATE RESIDENTIAL CHILD
CARE FACILITY LOCATED IN THE SCHOOL DISTRICT - SCOPE OF EDUCATION
LAW § 4002(1);

Supreme Court, Putnam County (1) granted plaintiff's motion for
summary judgment declaring that plaintiff is not responsible for
the costs of educating the children living at its facility who
are nonresidents of Garrison, New York, and (2) denied
defendant's motion for summary judgment declaring that plaintiff
is responsible for the costs of educating the children living at
its facility and that it is not the party responsible for
financing the education of those children; App. Div. affirmed and
remitted to Supreme Court for entry of a judgment declaring
accordingly.

DEPONCEAU, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 10/28/10; denial of motion for a
writ of mandamus; sua sponte examination whether the order
appealed from finally determines the proceeding within the
meaning of the Constitution and whether a substantial
constitutional question is directly involved or any other
jurisdictional basis exists to support an appeal as of right;
PRISONS AND PRISONERS - CHALLENGE TO APPELLATE DIVISION ORDER
DENYING A MOTION FOR A WRIT OF MANDAMUS;
App. Div. denied a motion for a writ of mandamus.

U.S. ELECTRONICS, INC. v SIRIUS SATELLITE RADIO, INC.:

1ST Dept. App. Div. order of 5/11/10; affirmance; leave to appeal
granted by Court of Appeals, 11/18/10;

ARBITRATION - LEGAL STANDARD GOVERNING APPLICATION TO VACATE AN ARBITRATION AWARD BASED ON FAILURE OF ARBITRATOR AND OPPOSING PARTY TO DISCLOSE ARBITRATOR'S ALLEGED CONFLICT OF INTEREST - FEDERAL ARBITRATION ACT - "EVIDENT PARTIALITY";

Supreme Court, New York County denied a petition to vacate an arbitration award, granted the cross motion to confirm the award, and confirmed the award; App. Div. affirmed.

UPTOWN HOLDINGS, LLC, et al., MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 10/12/10; confirmed administrative determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

EMINENT DOMAIN - PUBLIC USE - WHETHER CITY'S DECISION TO EXERCISE ITS POWER OF EMINENT DOMAIN TO CONDEMN THE SUBJECT PROPERTY SERVES A LEGITIMATE PUBLIC PURPOSE - ALLEGED ABSENCE OF INTEGRATED DEVELOPMENT PLAN - ALLEGED VIOLATIONS OF DUE PROCESS - EDPL 207 PROCEEDING; App. Div. confirmed the determination of respondent City of New York Department of Housing Preservation and Development authorizing the condemnation of petitioners' properties, denied the petition and dismissed the proceeding.