

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**January 4 through January 10, 2008**

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.

**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.**

AMEDIO, MATTER OF, V HEVESI:

3<sup>RD</sup> Dept. App. Div. judgment of 11/8/07; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT - WHETHER SUBSTANTIAL EVIDENCE SUPPORTED RESPONDENT'S DETERMINATION THAT PETITIONER FAILED TO PROVE PERMANENT INCAPACITY WHEN HE FILED FOR DISABILITY RETIREMENT; App. Div. judgment confirmed determination denying petitioner's application for accidental disability retirement benefits and dismissed the CPLR article 78 petition.

DINSIO, MATTER OF, v SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, COMMITTEE ON PROFESSIONAL STANDARDS:

3<sup>RD</sup> Dept. App. Div. orders of 9/17/07 and 11/9/07; denial of poor person relief (9/17/07 order) and denial of motion for reconsideration and for further relief (11/9/07 order); sua sponte examination whether the orders appealed from finally determine the proceeding and whether any jurisdictional basis exists for an appeal as of right;

MOTIONS AND ORDERS - DENIAL OF MOTIONS FOR POOR PERSON RELIEF AND FOR RECONSIDERATION AND FURTHER RELIEF;

App. Div. denied petitioner's motions for poor person relief and for reconsideration and further relief.

KOPSACHILIS v 130 EAST OWNERS CORP. et al.:

1<sup>ST</sup> Dept. App. Div. order of 9/20/07; affirmance with dissents; leave to appeal granted by App. Div., 12/27/07; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - WHETHER DEFENDANTS, THE OWNER AND MANAGING AGENT OF AN APARTMENT BUILDING, WERE ENTITLED TO SUMMARY JUDGMENT DISMISSING A COMPLAINT ALLEGING A VIOLATION OF MULTIPLE DWELLING LAW § 37 WHERE THE INJURED PLAINTIFF FELL DOWN AN UNLIT STAIRCASE DURING A BLACKOUT;

Supreme Court, New York County, among other things, denied defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

WARNER v HOUGHTON:

1<sup>ST</sup> Dept. App. Div. order of 8/30/07; modification and affirmance; sua sponte examination whether the Appellate Division had authority to grant leave to appeal on a certified question from an order remanding "for a new hearing"; whether defendant satisfied the condition imposed for vacatur of the monetary award for lost opportunity of foregone earnings, equitable distribution, deficiency of assets and counsel fees and forensic accountant fees; and whether the Appellate Division order certifies a question of law decisive of the correctness of the Appellate Division's decision given the modification of the amended judgment and order "on the law and the facts";

HUSBAND AND WIFE - EQUITABLE DISTRIBUTION, COUNSEL AND FORENSIC ACCOUNTANT FEES, AND OTHER FINANCIAL RULINGS - WHETHER DISTRIBUTION AND OTHER FINANCIAL AWARDS ARE REVIEWABLE ON APPEAL FROM A JUDGMENT OF DIVORCE ENTERED ON DEFAULT;

App. Div. modified (1) a 12/29/06 Supreme Court, New York County amended judgment of divorce, "on the law and the facts," vacated the monetary award for lost opportunity of foregone earnings, equitable distribution, deficiency of assets, counsel fees and forensic accountant fees, and remanded the matter for a new hearing thereon, the vacatur conditioned on the filing by defendant's counsel of a notice of appearance within 15 days of service of a copy of the App. Div. order with notice of entry, and otherwise affirmed the amended judgment; (2) an 8/24/06

Supreme Court order that, among other things, precluded defendant from discovery and deemed certain financial issues resolved, "on the law and the facts," vacated those provisions, denied plaintiff's motion to preclude and otherwise affirmed the order; and (3) a 6/7/06 Supreme Court order granting injunctive relief to plaintiff and directing defendant to pay counsel fees, "on the law and the facts," vacated the award, remanded for a new hearing on the merits and otherwise affirmed the order.