

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
January 25 through January 31, 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.

ANONYMOUS, MATTER OF (An Application for Admission to the Bar):

3RD Dept. App. Div. order of 7/5/07; denial of admission to practice law; sua sponte examination with respect to the timeliness of the appeal and whether any jurisdictional basis exists for an appeal as of right;
ATTORNEY AND CLIENT - ADMISSION TO PRACTICE - APPELLATE DIVISION
DENIAL OF PETITION FOR ADMISSION TO PRACTICE LAW;
App. Div. denied petitioner's application for admission to the New York State Bar notwithstanding the Committee on Character and Fitness's decision recommending that applicant be denied admission.

BROTHERS v NEW YORK STATE ELECTRIC AND GAS CORPORATION:

4TH Dept. App. Div. order of 9/28/07; reversal; leave to appeal granted by Court of Appeals, 1/15/08;

EMPLOYMENT RELATIONSHIPS - RESPONDEAT SUPERIOR - VICARIOUS LIABILITY - INDEPENDENT CONTRACTOR - WHETHER WORK PERMIT ISSUED BY NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO DEFENDANT NEW YORK STATE ELECTRIC AND GAS CORPORATION (NYSEG) FOR WORK TO BE PERFORMED ALONG STATE HIGHWAYS RENDERED NYSEG LIABLE TO A PLAINTIFF INJURED BY HIS EMPLOYER'S ALLEGED NEGLIGENCE WHERE NYSEG CONTRACTED WITH THE EMPLOYER TO TRIM AND REMOVE TREES ALONG A STATE HIGHWAY FOR NYSEG'S BENEFIT AND THE PERMIT REQUIRED NYSEG TO COMPLY WITH VARIOUS FEDERAL AND STATE WORKER SAFETY REGULATIONS - ASSUMPTION OF NONDELEGABLE DUTY;

Supreme Court, Onondaga County granted, in part, plaintiff's motion for summary judgment against defendant NYSEG and denied that defendant's motion for summary judgment dismissing the complaint against it; App. Div. reversed, denied plaintiff's motion for partial summary judgment against defendant NYSEG and granted that defendant's motion for summary judgment dismissing the complaint against it.

CONTINENTAL CASUALTY COMPANY v STRADFORD:

2ND Dept. App. Div. order of 12/11/07; reversal; Rule 500.11 review pending;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - DISCLAIMER OF COVERAGE BASED UPON INSURED'S NON-COOPERATION;

Supreme Court, Richmond County granted plaintiff's motion for summary judgment and denied defendant's cross motion for summary judgment; App. Div. reversed, denied plaintiff's motion for summary judgment declaring that it is not obligated to defend or indemnify defendant Stradford in two underlying actions, granted the cross motion for summary judgment by defendants Hector Gunaratne, Rose Gunaratne and Sumandasa Perera, and remitted the matter to Supreme Court for entry of a judgment declaring that plaintiff is obligated to defend and indemnify defendant Stradford in the two underlying actions.

CRAWFORD v CLAIBORNE:

1ST Dept. App. Div. order of 11/1/07; reversal with dissents; leave to appeal granted by App. Div., 1/15/08; Rule 500.11 review pending;

JUDGMENTS - SUMMARY JUDGMENT - TIMELINESS OF MOTION - GOOD CAUSE - WHETHER DEFENSE COUNSEL'S ERRONEOUS BELIEF THAT SHE HAD 120 DAYS TO MAKE A SUMMARY JUDGMENT MOTION CONSTITUTED GOOD CAUSE FOR DEFENDANT'S FAILURE TO MAKE THE MOTION WITHIN 60-DAY PERIOD ESTABLISHED BY COURT AT A PRELIMINARY CONFERENCE; JUDGES - REASSIGNMENT OF CASE TO DIFFERENT JUDGE UPON REMAND - REASONABLE

Supreme Court, New York County granted defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, denied defendants' motion for summary judgment dismissing the complaint and remanded the matter for further proceedings before a different Justice.

DUFFY v VOGEL, et al.:

1ST Dept. App. Div. order of 12/20/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; TRIAL - HARMLESS OR PREJUDICIAL ERROR - WHETHER DENIAL OF PLAINTIFF'S REQUEST TO POLL JURY IS HARMLESS ERROR; JURY; MOTION TO SET ASIDE VERDICT AND FOR MISTRIAL; PHYSICIANS - MEDICAL MALPRACTICE;

Supreme Court, New York County granted plaintiff's motion to set aside the verdict and declare a mistrial, and directed plaintiff to serve a copy of the order with notice of entry on the clerk of the trial support office to place the matter on the trial calendar; App. Div. reversed, denied plaintiff's motion to set aside the verdict and declare a mistrial, reinstated the verdict, and directed the clerk to enter judgment in favor of defendants dismissing the complaint.

FLEMMING, PEOPLE ex rel. v WOODS:

3RD Dept. App. Div. order of 12/31/07; denial of motions to vacate a judgment and for permission to file a late notice of appeal; sua sponte examination whether the Appellate Division order finally determines the matter and whether a substantial constitutional question is directly involved to support the appeal as of right; MOTIONS AND ORDERS - DENIAL OF HABEAS CORPUS PETITIONER'S MOTIONS TO VACATE JUDGMENT AND FOR PERMISSION TO FILE LATE NOTICE OF APPEAL;

App. Div. denied petitioner's motions to vacate a judgment and for permission to file a late notice of appeal.

MALAUSSENA (JOHN), PEOPLE v:

1ST Dept. App. Div. order of 10/4/07; affirmance; leave to appeal granted by Smith, J., 1/15/08; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - RIGHT TO REMAIN SILENT - MIRANDA WARNINGS GIVEN AFTER DEFENDANT MADE SOME STATEMENTS ABOUT THE CASE - WHETHER STATEMENTS MADE AFTER MIRANDA WARNINGS MUST BE EXCLUDED FROM EVIDENCE AS PART OF A CONTINUOUS CHAIN OF EVENTS; JURY CHARGE - INTOXICATION;

Supreme Court, Bronx County convicted defendant of murder in the second degree and sentenced him to a term of 25 years to life; App. Div. affirmed.

SANONYMOUS, MATTER OF:

1ST Dept. App. Div. order of 1/10/08; reversal; sua sponte examination whether any jurisdictional basis exists for an appeal

as of right;

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TERMINATION OF PARENTAL RIGHTS - ABANDONED CHILDREN - WHETHER
PETITIONER AGENCY PROVED BY CLEAR AND CONVINCING EVIDENCE THAT
RESPONDENT ABANDONED HIS CHILDREN;

Family Court, Bronx County orders terminated respondent father's
parental rights upon findings of abandonment and committed
custody and guardianship of the children to petitioner agency and
the Commission of Social Services for the purpose of adoption;
App. Div. reversed, vacated the orders and dismissed the
petitions.