

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**March 14 through March 20, 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.**

BERNSTEIN v FEINER:

2<sup>ND</sup> Dept. App. Div. judgment of 2/13/08; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
MUNICIPAL CORPORATIONS - PARKS - TOWN LAW § 232 - THE "FINNERMAN LAW" (L. 1982, CH 891) - CHALLENGE TO IMPOSITION OF COST OF PARK ONLY UPON TAXPAYERS OF TOWN'S UNINCORPORATED AREAS AND NOT UPON RESIDENTS OF TOWN'S INCORPORATED VILLAGES WHERE PARK IS OPEN TO USE BY ALL TOWN RESIDENTS;  
Supreme Court, Westchester County granted that branch of a CPLR article 78 petition which was for a judgment declaring that Town Law § 232 prohibits the Town of Greenburgh from financing the cost of acquiring property known as Taxter Ridge for parkland by imposing a tax solely upon property owners residing in the unincorporated area of the Town of Greenburgh; thereafter, the same court granted petitioner's motion for reargument and, upon reargument, adhered to its original determination; App. Div. reversed, denied that branch of the petition which was for a judgment declaring that Town Law § 232 prohibits the Town of Greenburgh from financing the cost of acquiring property known as Taxter Ridge for parkland by imposing a tax solely upon property

owners residing in the unincorporated area of the Town of Greenburgh, denied the petition in its entirety, declared that the Town of Greenburgh correctly allocated the cost of the park to the residents of the unincorporated areas of the Town of Greenburgh, and vacated the order made upon reargument.

DEFILIPPO, MATTER OF, v ROONEY, et al.:

2<sup>ND</sup> Dept. App. Div. judgment of 12/11/07; denial of CPLR article 78 petition; leave to appeal granted by App. Div., 2/7/08 and appeal as of right; Rule 500.11 review pending; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - DOUBLE JEOPARDY - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT PETITIONER FAILED TO DEMONSTRATE PROSECUTORIAL OR JUDICIAL MISCONDUCT INTENDED TO PROVOKE HIM INTO REQUESTING A MISTRIAL AND THAT PETITIONER OTHERWISE FAILED TO DEMONSTRATE A CLEAR LEGAL RIGHT TO REMEDIES IN THE NATURE OF PROHIBITION OR MANDAMUS; App. Div. denied petitioner's CPLR article 78 petition in the nature of prohibition to bar his retrial in People v DeFilippo on the ground that retrial would violate his right not to be twice placed in jeopardy for the same offense, and dismissed the proceeding.

ENNIS (SHELDON), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 6/21/07; affirmance; leave to appeal granted by Kaye, Ch.J., 3/6/08; CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - CONFLICT OF INTEREST - DEFENSE COUNSEL'S PROMISE NOT TO REVEAL EXCULPATORY INFORMATION PROVIDED TO HIM IN CONFIDENCE BY CO-DEFENDANT'S COUNSEL - ALLEGED VIOLATION OF BRADY v MARYLAND (373 US 83) - LEGAL SUFFICIENCY OF THE EVIDENCE SUPPORTING CONVICTION OF FIRST AND SECOND DEGREE ASSAULT AS TO PARTICULAR VICTIM; Supreme Court, New York County convicted defendant of conspiracy in the second degree, assault in the first degree, assault in the second degree and sentencing him, as a second felony offender, to an aggregate of 43 1/3 to 60 years; thereafter, the same court denied defendant's CPL 440.10 motion to vacate the judgment; App. Div. affirmed.

GRAHAM v DUNKLEY & NILT, INC.:

2<sup>ND</sup> Dept. App. Div. order of 2/1/08; reversal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; MOTOR VEHICLES - VICARIOUS LIABILITY OF OWNER OF LEASED VEHICLE - 49 USC § 30106 (THE "GRAVES" AMENDMENT) - WHETHER CONGRESS HAS AUTHORITY TO ENACT THE GRAVES AMENDMENT UNDER THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION;

Supreme Court, Queens County denied that branch of NILT, Inc.'s motion which was to dismiss the complaint insofar as asserted against it; App. Div. reversed and granted that branch of NILT, Inc.'s motion which was to dismiss the complaint insofar as asserted against it.

HARVEY, MATTER OF, v GOORD:

3<sup>RD</sup> Dept. App. Div. judgment of 1/17/08; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION ORDER CONFIRMING DETERMINATION FINDING PETITIONER GUILTY OF VIOLATING CERTAIN PRISON DISCIPLINARY RULES; App. Div. confirmed respondent's determination finding petitioner guilty of unauthorized organizational activity and a facility correspondence violation.

