

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 2 through May 8, 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.

FASSO v DOERR:

4TH Dept. App. Div. order of 12/21/07; affirmance; leave to appeal granted by Court of Appeals, 4/24/08;
INSURANCE - SUBROGATION RIGHTS OF NSURER - WHETHER THE TRIAL COURT ERRED IN DISMISSING INTERVENOR-PLAINTIFF HEALTH INSURER'S CAUSE OF ACTION FOR EQUITABLE SUBROGATION SUA SPONTE AFTER INJURED PLAINTIFF IN MALPRACTICE ACTION SETTLED WITH DEFENDANT; Supreme Court, Erie County, among other things, denied the motion of plaintiff-intervenor for a mistrial and dismissed the plaintiff-intervenor's complaint in intervention; App. Div. affirmed.

GROSSMAN, MATTER OF, v DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT:

1ST Dept. App. Div. orders of 3/23/06 and 3/18/08; suspension and disbarment; sua sponte examination with respect to the timeliness of the appeal from the March 23, 2006 order and whether the orders appealed from directly involve a substantial constitutional question;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - SUSPENSION AND DISBARMENT OF ATTORNEY;
App. Div. suspended and thereafter disbarred respondent attorney.

IDT CORPORATION v MORGAN STANLEY DEAN WITTER & CO., et al.:

1ST Dept. App. Div. order of 11/20/07; affirmance; leave to appeal granted by App. Div., 4/23/08;
CONTRACTS - CLAIMS BY A TELECOMMUNICATIONS COMPANY AGAINST ITS INVESTMENT BANKER FOR BREACH OF FIDUCIARY DUTY, TORTUOUS INTERFERENCE WITH CONTRACT, TORTUOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS, MISAPPROPRIATION OF CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION AND UNJUST ENRICHMENT;
WHETHER COLLATERAL ESTOPPEL BARS CERTAIN CLAIMS AS A RESULT OF PLAINTIFF'S PRIOR ARBITRATION AGAINST ANOTHER COMPANY;
Supreme Court, New York County, among other things, denied defendants' motion to dismiss the first, second, fourth and fifth causes of action in the complaint; App. Div. affirmed.

JOHNSON v CHAPIN:

1ST Dept. App. Div. order of 3/13/08; modification and affirmance; sua sponte examination whether the dissent at the App. Div. is on a question of law and whether the order appealed from finally determines the action within the meaning of the Constitution;
HUSBAND AND WIFE - DIVORCE - EQUITABLE DISTRIBUTION - VALUATION OF HUSBAND'S SEPARATE PROPERTY - REDUCTION IN VALUE OF SEPARATE PROPERTY BY AMOUNTS HUSBAND REQUIRED TO PAY TO A PRIOR WIFE PURSUANT TO THE TERMS OF A PRIOR DIVORCE JUDGMENT;
Supreme Court, New York County issued a judgment of awarding a divorce and money judgment, distributed the parties marital property and awarded plaintiff wife maintenance, child support and counsel fees; App. Div. modified by reducing wife's share of enhanced value of certain property, vacating the wife's credit for 50% of the difference between the sum expended on renovations to that property and the property's appreciated value, and crediting husband for excess temporary maintenance payments and 50% of the mortgage and maintenance paid for the Fifth Avenue cooperative during the pendency of the divorce action, and otherwise affirmed.

KOSICH, MATTER OF, v NEW YORK STATE DEPARTMENT OF HEALTH et al.:

3RD Dept. App. Div. order 3/13/08; confirmation; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PHYSICIANS AND SURGEONS - DISCIPLINARY PROCEEDINGS - CPLR ARTICLE 78 PROCEEDING TO REVIEW A DETERMINATION OF THE ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT REVOKING PETITIONER'S LICENSE TO PRACTICE MEDICINE IN NEW YORK; CLAIMED VIOLATION OF DUE PROCESS IN PROCEEDING COMMENCED IN APPELLATE DIVISION PURSUANT TO PUBLIC HEALTH LAW § 230-c(5); App. Div. confirmed a determination of the Administrative Review Board for Professional Medical Conduct revoking petitioner's license to practice medicine in New York, and dismissed the petition.

LEYSE &c. v DOMINO'S PIZZA LLC:

1ST Dept. App. Div. order of 2/28/08; modification and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

INJUNCTIONS - DECLARATORY JUDGMENTS - ACTION BY PLAINTIFF INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED FOR AN INJUNCTION AND JUDGMENT DECLARING THAT DEFENDANT FOOD DISTRIBUTOR TRESPASSED ON PLAINTIFF'S PROPERTY BY SLIPPING AN ADVERTISING FLIER UNDER THE DOOR TO PLAINTIFF'S APARTMENT WITHOUT PLAINTIFF'S PERMISSION; DISMISSAL OF COMPLAINT; CLASS ACTION; COSTS AND SANCTIONS;

Supreme Court, New York County granted defendant's cross motion to dismiss the complaint, dismissed the complaint in its entirety with prejudice and awarded costs and sanctions against plaintiff; App. Div. modified to vacate the award of costs and sanctions and otherwise affirmed.

MARINO, MATTER OF, v KAHN &c. et al.:

2ND Dept. App. Div. judgment of 3/18/08; denial of CPLR article 78 petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CHALLENGE TO APPELLATE DIVISION JUDGMENT DENYING CPLR ARTICLE 78 PETITION SEEKING TO PROHIBIT RESPONDENTS FROM ENFORCING A COUNTY COURT ORDER DIRECTING PETITIONER TO FURNISH BUCCAL SWAB SAMPLES - ALLEGED VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS AND CONSTITUTIONAL RIGHT TO BE FREE FROM BODILY INTRUSION;

App. Div. denied a CPLR article 78 petition and dismissed the proceeding seeking to prohibit respondents from enforcing an order of the County Court, Suffolk County that directed the petitioner to furnish buccal swab samples upon notice from the District Attorney in connection with the investigation of an assault of a certain individual.

OKUN v TANNERS:

1ST Dept. App. Div. order of 1/17/08; affirmance with dissents; leave to appeal granted by App. Div., 4/22/08; Rule 500.11 review pending;

DISMISSAL AND NONSUIT - RESTORING ACTION TO CALENDAR - WHETHER SUPREME COURT PROPERLY RESTORED A CASE TO THE TRIAL CALENDAR AFTER IT HAD BEEN DISMISSED PURSUANT TO CPLR 3404;

Supreme Court, New York County denied defendant's motion to dismiss the action as abandoned upon condition that plaintiff pay defendant's attorney \$1,000 and granted plaintiff's cross motion to restore the action to the trial calendar upon the same condition; App. Div. affirmed.

PATTEN &c., et al. v HAMBURG OB/GYN GROUP, P.C. et al:

4TH Dept. App. Div. order of 4/25/08; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

LIMITATION OF ACTIONS - MEDICAL MALPRACTICE - CONTINUOUS TREATMENT DOCTRINE;

Supreme Court, Erie County granted in part and denied in part defendant's motion for summary judgment dismissing the complaint in a medical malpractice action; App. Div. affirmed.