

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
June 27 through July 3, 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.

BENITEZ (RIGOBERTO), PEOPLE v:

2ND Dept. App. Div. order of 1/22/08; affirmance; leave to appeal granted by Pigott, Jr., J., 6/10/08;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION;

Supreme Court, Queens County judgment convicting defendant, after a jury trial, of assault in the second degree and imposing sentence; App. Div. affirmed.

CONSEDINE v PORTVILLE CENTRAL SCHOOL DISTRICT:

4TH Dept. App. Div. order of 3/14/08; affirmance; leave to appeal granted by Court of Appeals, 6/26/08;

SCHOOLS - BOARD OF EDUCATION - WHETHER EDUCATION LAW § 3012 PROHIBITS A BOARD OF EDUCATION FROM ENTERING INTO A DURATIONAL EMPLOYMENT CONTRACT WITH A PROBATIONARY SCHOOL ADMINISTRATOR AND, IF NOT, WHETHER THE PARTIES' EMPLOYMENT CONTRACT GUARANTEED PLAINTIFF EMPLOYMENT FOR A SPECIFIED PERIOD OF TIME;

Supreme Court, Cattaraugus County awarded plaintiff money damages in a stipulated amount; App. Div. affirmed.

PARTNERSHIP 92, LP, MATTER OF v STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL:

1ST Dept. App. Div. order of 12/20/07; affirmance with dissents; Rule 500.11 review pending;

LANDLORD AND TENANT - RENT REGULATION - APPLICATION OF RENT REGULATION REFORM ACT OF 1997 TO OVERCHARGE COMPLAINT FILED IN 1987 - CALCULATION OF LEGAL REGULATED RENT - EXISTENCE OF OVERCHARGE;

Supreme Court, New York County denied a CPLR article 78 petition to annul a 2/25/04 determination of respondent New York State Division of Housing and Community Renewal that, among other things, directed petitioner landlord to refund rent overcharges to tenant in the amount of \$58,169.89 and dismissed the proceeding; App. Div. affirmed.

PITERNIAK, MATTER OF v CINQUE:

2ND Dept. App. Div. order of 5/20/08; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

SPECIFIC PERFORMANCE - CONTRACT FOR SALE OF REAL PROPERTY - STATUTE OF FRAUDS - SUMMARY JUDGMENT;

Surrogate's Court, Suffolk County granted the motion of Ellen Cinque for summary judgment dismissing the petition for specific performance of an alleged agreement for the sale of real property; App. Div. affirmed.

SYNDICATED COMMUNICATION VENTURE PARTNERS IV, LP v BAYSTAR CAPITAL LP et al.:

1ST Dept. App. Div. order of 5/22/08; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

JURY - RIGHT TO JURY TRIAL - WAIVER OF JURY TRIAL BY JOINDER OF LEGAL AND EQUITABLE CLAIMS; CPLR 4213(b) - FORM OF DECISION - STATEMENT OF FACTS COURT DEEMS ESSENTIAL;

Supreme Court, New York County, after a nonjury trial, dismissed the first amended complaint with prejudice; App. Div. affirmed.