

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 1 through August 7, 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.

DEJESUS v NEW YORK CITY HOUSING AUTHORITY:

1ST Dept. App. Div. order of 7/8/08; reversal with dissents; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - SLIP AND FALL ON TRASH LAYING IN WALKWAY TO DUMP SITE NEAR APARTMENT BUILDING - PERSONAL INJURY; SUMMARY JUDGMENT - WHETHER ISSUE OF FACT EXISTS AS TO LANDLORD'S KNOWLEDGE, CAUSATION OR CREATION OF CONDITION THAT CAUSED ACCIDENT;

Supreme Court, Bronx County denied defendant's motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendant's motion for summary judgment and dismissed the complaint.

GOLDEN GATE YATCH CLUB v SOCIETE NAUTIQUE DE GENEVE, et al.:
1ST Dept. App. Div. order of 7/29/08; reversal with dissents;
DEEDS - CONSTRUCTION - AMERICA'S CUP DEED OF GIFT -
INTERPRETATION OF PHRASE "HAVING FOR ITS ANNUAL REGATTA" AS USED
IN THE DEED OF TRUST DOCUMENT TO IDENTIFY THE CHALLENGER OF
RECORD; TRUST DOCUMENT; YACHT CLUBS - SAILING REGATTAS;
Supreme Court, New York County, among other things, declared the
challenge of intervenor club Nautico Espanol De Vela (CNEV)
invalid and plaintiff Golden Gate Yacht Club (GGYC) the
Challenger of Record under the Deed of Gift; App. Div. reversed,
declared CNEV the Challenger of Record, and tolled the ten-month
notice period for the defender to prepare for the challenge until
service of a copy of the Appellate Division order.

MACSHANE (DERMOT), PEOPLE v:
App. Term 9th and 10th order of 10/5/07; affirmance; leave to
appeal granted by Ciparick, J., 7/22/08; Rule 500.11 review
pending;
CRIMES AND CRIMINAL PROCEDURE - JURORS - SELECTION OF JURY -
ALLEGED EXERCISE OF PEREMPTORY CHALLENGES ON THE BASIS OF JUROR
GENDER; OTHER CLAIMED DENIALS OF DUE PROCESS AT TRIAL;
Justice Court of the Town of Carmel, Putnam County convicted
defendant, upon a jury verdict, of harassment in the second
degree; App. Term affirmed.

MAZERBO v MURPHY:
3RD Dept. App. Div. order of 6/19/08; affirmance with dissents;
sua sponte examination whether the order appealed from finally
determines the action within the meaning of the Constitution;
NEGLIGENCE - MAINTENANCE OF PREMISES - CONSTRUCTIVE NOTICE OF
DEFECTIVE CONDITION - DENIAL OF SUMMARY JUDGMENT;
Supreme Court, Fulton County denied defendant's motion for
summary judgment; App. Div. affirmed.

NEW YORK STATE CRIME VICTIMS BOARD v LORICK:
3RD Dept. App. Div. order of 6/27/08; grant of cross motion to
dismiss appeal; sua sponte examination whether a substantial
constitutional question is directly involved to support an appeal
as of right, whether the appeal was timely taken in the manner
and place required by CPLR 5515(1), and whether any other basis
exists for an appeal as of right;
APPEAL - APPELLATE DIVISION - DISMISSAL OF APPEAL; PRISONS AND
PRISONERS - INMATE ACCOUNT - PROCEEDING BY NEW YORK STATE CRIME
VICTIMS BOARD PURSUANT TO EXECUTIVE LAW § 632-a AND CPLR ARTICLE
63 TO ENJOIN RESPONDENT INMATE AND THE SUPERINTENDENT OF CLINTON
CORRECTIONAL FACILITY FROM DISPERSING OR TRANSFERRING FUNDS
CREDITED TO THE INMATE'S ACCOUNT;

Supreme Court, Albany County granted petitioner's motion for a preliminary injunction, and enjoined respondent and the Superintendent of Clinton Correctional Facility from dispersing or transferring funds in the amount of \$15,684 deposited to respondent's inmate account, less the first \$1,000; App. Div. granted petitioner Crime Victims Board's cross motion to dismiss the appeal and denied respondent's motion to proceed as a poor person on the appeal as academic.

WEAVER (SCOTT), PEOPLE v:

3RD Dept. App. Div. order of 6/5/08; affirmance; leave to appeal granted by Stein, J., 7/22/08;

CRIMES AND CRIMINAL PROCEDURE - UNLAWFUL SEARCH AND SEIZURE - ALLEGED VIOLATION OF FEDERAL AND STATE CONSTITUTIONS - WARRANTLESS PLACEMENT BY POLICE OF BATTERY OPERATED GLOBAL POSITIONING SYSTEM (GPS) DEVICE UNDER THE BUMPER OF DEFENDANT'S VAN WHILE IT WAS PARKED ON A PUBLIC STREET; ACCOMPLICES - JURY CHARGE - WHETHER TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO DETERMINE AS A MATTER OF LAW THAT A CO-DEFENDANT'S GIRLFRIEND WAS AN ACCOMPLICE TO A PARTICULAR BURGLARY, OR TO SUBMIT THAT ISSUE TO THE JURY; WHETHER TRIAL COURT COMMITTED REVERSIBLE ERROR IN PERMITTING THE PROSECUTION TO PRESENT ON ITS DIRECT CASE CERTAIN "CONSCIOUSNESS OF GUILT" EVIDENCE; SUFFICIENCY OF THE EVIDENCE;

Supreme Court, Albany County convicted defendant of the crimes of burglary in the third degree and attempted larceny in the second degree; App. Div. affirmed and remitted to Supreme Court for further proceedings pursuant to CPLR 460.50(5).