

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
February 27 through March 5, 2009

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.

GALLAGHER et al. v THE NEW YORK POST et al.:

1ST Dept. App. Div. order of 10/30/08; modification and affirmance with dissents; leave to appeal granted by App. Div., 2/10/09; Rule 500.11 review pending;

LABOR - SAFE PLACE TO WORK - EXISTENCE OF ISSUES OF FACT ON THE ISSUE OF LIABILITY ON A LABOR LAW § 240(1) CAUSE OF ACTION; Supreme Court, New York County denied plaintiffs' motion for summary judgment on the issue of liability on their Labor Law § 240(1) cause of action; App. Div. modified in various respects and, as relevant here, otherwise affirmed.

GILLEN, MATTER OF v CONKLING:

2ND Dept. App. Div. orders of 11/10/08 and 5/13/08; granting reargument (11/10/08 order) and modification and affirmance (5/13/08 order); leave to appeal granted by Court of Appeals, 2/12/09;

TAXATION - REAL PROPERTY TAX - APPLICATION OF NASSAU COUNTY ADMINISTRATIVE CODE §§ 5-15.0(a)(3), 5-49.0(a) AND 5-45.0 TO TENDER OF A TAX PAYMENT BY TAX SALE CERTIFICATE HOLDER; Supreme Court, Nassau County granted a CPLR article 78 petition to the extent of directing the Treasurer of the County of Nassau to add the amount of taxes paid by Gillen by the purchase of tax sale certificate number 2021/2005 in the amount of \$4,779.61 and by the purchase of tax sale certificate number 2306/2005 in the amount of \$7,995.33, and denying the petition to the extent it sought to compel the Treasurer to accept tender of a tax payment with respect to other property; App. Div. modified the judgment by deleting the provisions thereof granting those branches of the petition which were to compel the Treasurer of the County of Nassau to credit, to tax liens already held by petitioner, the real property taxes he paid pursuant to tax sale certificate number 2021/2005 in the amount of only \$4,779.61 and pursuant to tax sale certificate number 2306/2005 in the amount of only \$7,995.33, and substituting therefor provisions granting those branches of the petition to the extent of compelling the Treasurer of the County of Nassau to credit, to the tax liens already held by the petitioner, the real property taxes he paid pursuant to tax sale certificate number 2021/2005 in the amount of \$15,776.28 and pursuant to tax sale certificate number 2306/2005 in the amount of \$34,401.82, and affirmed the judgment as so modified; thereafter, App. Div. granted petitioner's motion for reargument and, upon reargument, amended the preamble of the 5/13/08 decision and order in various respects and otherwise denied the motion.

NEW YORK CITY TRANSIT AUTHORITY v TRANSPORT WORKERS UNION OF GREATER NEW YORK, et al.:

2ND Dept. App. Div. order of 12/30/08; affirmance with dissents; Rule 500.11 review pending;

ARBITRATION - DETERMINATION THAT AWARD REDUCING DISCIPLINARY PENALTY WAS IN EXCESS OF ARBITRATOR'S POWERS - SCOPE OF JUDICIAL REVIEW;

Supreme Court, Kings County granted a CPLR article 75 petition, vacated so much of a July 21, 2006 arbitration award as reduced the penalty petitioner imposed upon an employee from dismissal to reinstatement without back pay, and reinstated the original penalty of dismissal; App. Div. affirmed.

SIBLEY (MONTGOMERY BLAIR), MATTER OF:

4TH Dept. App. Div. order of 2/6/09; suspension of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - RECIPROCAL

App. Div. suspended attorney until further order of that court, without leave to apply for reinstatement until such time as he has been reinstated to the practice of law in Florida.

WORD, MATTER OF v ZAMBELLI:

2ND Dept. App. Div. order of 1/20/09; 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 - MANDAMUS - WHEN REMEDY AVAILABLE;

App. Div. denied a CPLR article 78 proceeding in the nature of mandamus to compel respondent Justice to give "due process review" to petitioner's motion for leave to reargue and/or renew dated January 2, 2007 and motion for leave to renew dated May 7, 2007, and dismissed the proceeding.