

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 8 through May 14, 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.

BROWN (HOMER), PEOPLE v:

4TH Dept. App. Div. order of 2/6/09; affirmance; leave to appeal granted by Pigott, J., 4/23/09;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - DENIAL OF MOTION TO WITHDRAW PLEA IN ABSENCE OF INQUIRY INTO WHETHER DEFENDANT'S DECISION TO ENTER PLEA WAS INFLUENCED BY THE OPPORTUNITY TO GET OUT OF JAIL TO SEE HIS HOSPITALIZED CHILD;

Monroe County Court convicted defendant, upon his guilty plea, of robbery in the first degree and grand larceny in the fourth degree; App. Div. affirmed.

DRAKE, MATTER OF v KLOCH &c., et al.:

4TH Dept. App. Div. order of 4/7/09; denial of stay and dismissal of CPLR article 78 proceeding; sua sponte examination whether that part of the Appellate Division order that denied a stay finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal taken as of right from that part of the Appellate Division order that dismissed the CPLR article 78 proceeding;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - DISMISSAL OF CPLR ARTICLE 78 PROCEEDING SEEKING AN ORDER PROHIBITING PROSECUTION OF A CRIMINAL ACTION AGAINST PETITIONER - ALLEGED DOUBLE JEOPARDY AND PROSECUTORIAL MISCONDUCT;

App. Div. denied a motion for a stay and dismissed the CPLR article 78 proceeding.

JUDGE (ROBERT E.) v NEW YORK COLLEGE OF PROFESSIONAL HEALTH:

2ND Dept. App. Div. orders of 11/6/08, 9/10/08 and 3/31/08; Supreme Court orders of 8/21/07 and 6/18/07; sua sponte examination whether the appeal was timely taken, whether the November 6, 2008 and March 31, 2008 Appellate Division orders finally determine the action within the meaning of the Constitution, whether appellant is an aggrieved party within the meaning of CPLR 5511 with respect to the March 31, 2008 Appellate Division order and whether any jurisdictional basis otherwise exists to support an appeal as of right;

CHALLENGE TO VARIOUS ORDERS - APPELLATE DIVISION ORDER DENYING MOTION TO RECALL AND VACATE AN ORDER OF THAT COURT DISMISSING APPEAL FOR FAILURE TO PERFECT - APPELLATE DIVISION ORDER GRANTING POOR PERSON RELIEF AND ENLARGEMENT OF TIME TO PERFECT APPEAL - SUPREME COURT ORDER GRANTING PLAINTIFF'S MOTION FOR REARGUMENT AND, UPON REARGUMENT, ADHERING TO PRIOR DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS THE COMPLAINT;

Supreme Court, Nassau County granted defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(8) and thereafter granted plaintiff's motion for reargument and, upon reargument, adhered to its prior decision; App. Div. granted plaintiff's motion for poor person relief and an enlargement of time to perfect the appeal (3/31/08 App. Div. order), granted defendant's motion to dismiss the appeal for failure to timely perfect (9/10/08 App. Div. order) and denied plaintiff's motion to recall and vacate the 9/10/08 App. Div. order (11/6/08 App. Div. order).

JUSTICE, MATTER OF v HOGAN:

3RD Dept. App. Div. order of 4/17/09; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

CHALLENGE TO APPELLATE DIVISION ORDER THAT, AMONG OTHER THINGS, DENIED A MOTION TO COMPEL PRODUCTION OF THE ORIGINAL RECORD;

App. Div., among other things, denied a motion to compel production of the original record.

SNYDER v BRONFMAN:

1ST Dept. App. Div. order of 12/23/08; reversal; leave to appeal granted by Court of Appeals, 4/30/09;
STATUTE OF FRAUDS - AGREEMENT TO PAY FINDER'S FEE - DISMISSAL OF CAUSES OF ACTION FOR UNJUST ENRICHMENT AND QUANTUM MERUIT - APPLICATION OF GENERAL OBLIGATIONS LAW § 5-701(a)(10) TO ORAL JOINT VENTURE AGREEMENT;
Supreme Court, New York County granted defendant's motion to dismiss the complaint in part and denied the motion to dismiss plaintiff's causes of action for unjust enrichment and quantum meruit; App. Div. reversed insofar as appealed from and granted defendant's motion to dismiss the causes of action for unjust enrichment and quantum meruit.

VALCENCIA (ALBEIRO), PEOPLE &c.:

2ND Dept. App. Div. order of 1/27/09; modification and affirmance; leave to appeal granted by Dillon, J., 3/27/09; Rule 500.11 review pending;
CRIMES AND CRIMINAL PROCEDURE - ASSAULT - DEPRAVED INDIFFERENCE ASSAULT - MENS REA - WHETHER DEFENDANT'S STATE OF MIND AT THE TIME HE CONSUMED ALCOHOL WAS TOO TEMPORALLY REMOTE FROM HIS LATER OPERATION OF A VEHICLE AND COLLISION WITH COMPLAINANT'S VEHICLES TO SUPPORT A CONVICTION FOR DEPRAVED INDIFFERENCE ASSAULT;
Supreme Court, Nassau County convicted defendant of assault in the first degree, assault in the second degree, vehicular assault in the second degree, assault in the third degree, operating a motor vehicle while under the influence of alcohol (two counts), reckless driving, and violations of Vehicle and Traffic Law §§ 1130(1), (2) and 1127(a), after a nonjury trial, and imposing sentence; App. Div. modified the judgment by vacating the conviction of assault in the first degree, vacating the sentence imposed thereon and dismissing that count of the indictment, and affirmed the judgment as so modified.

