

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 10 through July 16, 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.

COZZANI (HENRY), PEOPLE v:

2ND Dept. App. Div. order of 2/10/09; affirmance; leave to appeal granted by Ciparick, J., 6/12/09; Rule 500.11 review pending; CRIMES - INDICTMENT - DISMISSAL OF INDICTMENT - WHETHER THE PEOPLE MAY AVOID DISMISSAL OF INDICTMENT ON SPEEDY TRIAL GROUNDS BY INVOKING THE "EXCEPTIONAL CIRCUMSTANCES" EXCLUSION OF CPL 30.30(4)(g) TO EXCLUDE THE PERIOD DURING WHICH AN APPEAL WAS PENDING IN AN UNRELATED PROSECUTION INVOLVING SIMILAR LEGAL ISSUES;

Suffolk County Court granted defendant's motion pursuant to CPL 210.20(1)(g) and CPL 30.30(1)(a) to dismiss the indictment; App. Div. affirmed.

CUSUMANO et al. v CITY OF NEW YORK:

2ND Dept. App. Div. order of 4/7/09; modification; leave to appeal granted by App. Div., 6/18/09; Rule 500.11 review pending; NEGLIGENCE - INJURIES TO FIREFIGHTERS - ACTION PURSUANT TO GENERAL MUNICIPAL LAW § 205-a TO RECOVER DAMAGES FOR PERSONAL INJURIES TO A FIREFIGHTER WHO FELL DOWN A FLIGHT OF STAIRS WHILE ATTENDING TRAINING IN A BUILDING OWNED BY DEFENDANT CITY - ALLEGED VIOLATION OF CERTAIN ADMINISTRATIVE CODE SECTIONS REQUIRING A BUILDING OWNER TO MAINTAIN THE BUILDING, INCLUDING THE STAIRWELL AND HANDRAILS, IN SAFE CONDITION; SUFFICIENCY OF EVIDENCE TO SUPPORT JURY VERDICT;

Supreme Court, Queens County judgment in favor of plaintiff in the principal amount of \$1,700,000; App. Div. modified by deleting the provision awarding plaintiff damages in the sum of \$1,200,000 for past pain and suffering, granted that branch of defendant's motion pursuant to CPLR 4404(a) which was to set aside the verdict with respect to damages for past pain and suffering as excessive, modified the order entered 8/31/06 accordingly, and granted a new trial as to damages for past pain and suffering unless, within 30 days after service of a copy of decision, plaintiff files a written stipulation consenting to decrease the verdict as to damages for past pain and suffering from \$1,200,000 to \$755,000; and in the event that the plaintiff so stipulates, affirmed the judgment as so reduced and amended.

FLORES v LANGSAM PROPERTY SERVICES CORPORATION, et al.:

1ST Dept. App. Div. order of 6/11/09; reversal with dissents; Rule 500.11 review pending; NEGLIGENCE - MAINTENANCE OF PREMISES - CONSTRUCTIVE NOTICE OF DEFECTIVE CONDITION - SCALDING WATER SUDDENLY SPRAYING FROM SHOWER; LANDLORD AND TENANT; SUMMARY JUDGMENT; Supreme Court, Bronx County, among other things, denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendants' motion and directed the Clerk to enter judgment in favor of defendants dismissing the complaint.

JOSHUA H., MATTER OF:

2ND Dept. App. Div. order of 5/12/09; affirmance; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

GUARDIAN AND WARD - REMOVAL OF GUARDIAN - ALLEGED REMOVAL OF FUNDS FROM SUPPLEMENTAL NEEDS TRUST ACCOUNT; Supreme Court, Queens County, among other things, removed Grace N. as the successor guardian of the person and property of Joshua H. and as the trustee of the supplemental needs trust established for his benefit, and appointed his mother, Carol S., as the substitute successor guardian and trustee; App. Div. affirmed.

LUCIERE (ANDREW), PEOPLE v:

2ND Dept. App. Div. order of 2/10/09; affirmance; leave to appeal granted by Ciparick, J., 6/12/09; Rule 500.11 review pending; CRIMES - INDICTMENT - DISMISSAL OF INDICTMENT - WHETHER THE PEOPLE MAY AVOID DISMISSAL OF INDICTMENT ON SPEEDY TRIAL GROUNDS BY INVOKING THE "EXCEPTIONAL CIRCUMSTANCES" EXCLUSION OF CPL 30.30(4)(g) TO EXCLUDE THE PERIOD DURING WHICH AN APPEAL WAS PENDING IN AN UNRELATED PROSECUTION INVOLVING SIMILAR LEGAL ISSUES;

Suffolk County Court granted defendant's motion pursuant to CPL 210.20(1)(g) and CPL 30.30(1)(a) to dismiss the indictment; App. Div. affirmed.

PRICE (STEPHEN), PEOPLE v:

2ND Dept. App. Div. order of 2/10/09; affirmance; leave to appeal granted by Ciparick, J., 6/12/09; CRIMES - INDICTMENT - DISMISSAL OF INDICTMENT - WHETHER THE PEOPLE MAY AVOID DISMISSAL OF INDICTMENT ON SPEEDY TRIAL GROUNDS BY INVOKING THE "EXCEPTIONAL CIRCUMSTANCES" EXCLUSION OF CPL 30.30(4)(g) TO EXCLUDE THE PERIOD DURING WHICH AN APPEAL WAS PENDING IN AN UNRELATED PROSECUTION INVOLVING SIMILAR LEGAL ISSUES;

Suffolk County Court granted defendant's motion pursuant to CPL 210.20(1)(g) and CPL 30.30(1)(a) to dismiss the indictment; App. Div. affirmed.

SCHNEIDER, ESTATE OF v FINMANN, et al.:

2ND Dept. App. Div. order of 3/24/09; affirmance; leave to appeal granted by Court of Appeals, 6/30/09; ATTORNEY AND CLIENT - MALPRACTICE - ACCRUAL OF CAUSE OF ACTION - WHETHER CAUSE OF ACTION FOR LEGAL MALPRACTICE IN ESTATE PLANNING ACCRUES WHEN THE MALPRACTICE IS COMMITTED, THEREBY SURVIVING DECEDENT'S DEATH AND PERMITTING THE ESTATE TO COMMENCE A LEGAL ACTION PURSUANT TO EPTL 11-3.2(b) - QUESTION OF PRIVITY BETWEEN ESTATE AND DECEDENT'S LAWYER; INCREASED ESTATE TAXES AS DAMAGES; Supreme Court, Nassau County granted that branch of the motion of defendants Finmann and Victor M. Finmann P.C. which was to dismiss the complaint as asserted against them for failure to state a cause of action pursuant to CPLR 3211(a)(7); App. Div. affirmed.

STATE OF NEW YORK v LVF REALTY CO., INC., et al.:

2ND Dept. App. Div. order of 2/10/09; affirmance; GAS AND OIL - OIL SPILL CLEANUP - CONSTITUTIONAL CHALLENGES TO IMPOSITION OF \$6 MILLION IN CIVIL PENALTIES PURSUANT TO NAVIGATION LAW § 192 GIVEN THE AMOUNT AWARDED FOR CLEANUP COSTS, THE ACCRUAL OF THE PENALTY WITHOUT AN OPPORTUNITY FOR A HEARING, THE IMPOSITION OF THE PENALTY WITHOUT AN OPPORTUNITY TO ASSERT A GOOD FAITH DEFENSE AND THE ABSENCE OF JURY INSTRUCTIONS REGARDING THE ASSESSMENT OF PENALTIES;

Supreme Court, Nassau County judgment awarding plaintiff approximately \$65,000 in cleanup costs and \$6,000,000 in civil penalties; App. Div. affirmed.

VELAZQUEZ v ST. BARNABAS HOSPITAL:

1ST Dept. App. Div. order of 12/4/08; affirmance; leave to appeal granted by Court of Appeals, 6/30/09; Rule 500.11 review pending; STIPULATIONS - ENFORCEMENT - CONFIDENTIALITY AGREEMENT - SATISFACTION OF "OPEN COURT" REQUIREMENT OF CPLR 2104 - AGREEMENT TO IMPOSITION OF PUNITIVE DAMAGES;

Supreme Court, Bronx County granted defendant's motion pursuant to CPLR 2104 to enforce the parties' settlement and confidentiality agreement and denied plaintiff's cross motion to, among other things, enforce the agreement without the confidentiality component; App. Div. affirmed.

ZARATE (CHARLES), PEOPLE v:

2ND Dept. App. Div. order of 2/10/09; affirmance; leave to appeal granted by Ciparick, J., 6/12/09; Rule 500.11 review pending; CRIMES - INDICTMENT - DISMISSAL OF INDICTMENT - WHETHER THE PEOPLE MAY AVOID DISMISSAL OF INDICTMENT ON SPEEDY TRIAL GROUNDS BY INVOKING THE "EXCEPTIONAL CIRCUMSTANCES" EXCLUSION OF CPL 30.30(4)(g) TO EXCLUDE THE PERIOD DURING WHICH AN APPEAL WAS PENDING IN AN UNRELATED PROSECUTION INVOLVING SIMILAR LEGAL ISSUES;

Suffolk County Court granted defendant's motion pursuant to CPL 210.20(1)(g) and CPL 30.30(1)(a) to dismiss the indictment; App. Div. affirmed.

