

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
August 21 through August 27, 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.

ATTEA, MATTER OF v TAX APPEALS TRIBUNAL, et al.:

3rd Dept. App. Div. judgment of 7/9/09; confirmation; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - PERSONAL INCOME TAX - ARTICLE 78 PROCEEDING TO REVIEW RESPONDENT TAX APPEALS TRIBUNAL'S DETERMINATION SUSTAINING A PERSONAL INCOME TAX ASSESSMENT IMPOSED AGAINST PETITIONERS UNDER TAX LAW ARTICLE 22 - FEDERALLY LICENSED INDIAN TRADER INVOLVED IN WHOLESALE TOBACCO SALES; PROCEEDING AGAINST OFFICER OR BODY;

BRADY v THE WILLIAMS CAPITAL GROUP, L.P. et al.:

1ST Dept. App. Div. order of 4/30/09; reversal with dissents; ARBITRATION - ARBITRATION FEES AND COSTS - WHETHER THE FEE-SPLITTING PROVISION OF THE ARBITRATION AGREEMENT BETWEEN EMPLOYEE AND EMPLOYER IS VIOLATIVE OF PUBLIC POLICY - AMERICAN ARBITRATION ASSOCIATION'S "EMPLOYER PAYS" RULE; Supreme Court, New York County denied the petition and dismissed the CPLR article 78 proceeding to compel respondent American Arbitration Association to enter a default judgment against The Williams Capital Group (Williams) and to compel Williams to pay the arbitration fees; App. Div. reversed and granted the petition to the extent of directing Williams to pay the arbitration fees, subject to reallocation of those costs by the arbitrator.

CRUZ (ANGEL L.), PEOPLE v:

4TH Dept. App. Div. order of 12/31/08; affirmance; leave to appeal granted by Jones, J., 8/6/09; CRIMES - JURORS - NOTE FROM JURY REQUESTING TRIAL EXHIBIT - TRIAL COURT'S FAILURE TO NOTIFY COUNSEL OF JURY NOTE - UNCLEAR RECORD OF TRIAL COURT'S RESPONSE TO JURY'S NOTE; Supreme Court, Monroe County convicted defendant, upon a jury verdict, of two counts of assault in the first degree; App. Div. affirmed.

FRAZIER (CHARLES), PEOPLE v:

1ST Dept. App. Div. order of 1/13/09; modification; leave to appeal granted by Read, J., 8/11/09; CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER DEFENDANT MAY BE SENTENCED CONSECUTIVELY FOR THE CRIMES OF BURGLARY AND GRAND LARCENY WHERE THE EVIDENCE ESTABLISHES THAT DEFENDANT MADE HIS UNLAWFUL ENTRY WITH THE INTENT TO COMMIT GRAND LARCENY; COMPETENCY OF DEFENDANT TO STAND TRIAL; PROOF OF PRIOR CONVICTION; SENTENCE - PERSISTENT FELONY OFFENDER; Supreme Court, New York County convicted defendant, upon a jury verdict, of three counts of burglary in the second degree, two counts of grand larceny in the third degree and one count of bail jumping in the second degree, and sentenced him, as a persistent violent felony offender, to concurrent terms of 16 years to life for the burglary convictions, to run consecutively with concurrent terms of 2 to 4 years for the larceny convictions and to a term of 2 to 4 years for the bail jumping conviction; App. Div. modified to the extent of directing that the sentences for the larceny convictions be served concurrently with the sentences for the burglary convictions.

GASQUES et al. v THE STATE OF NEW YORK:

2ND Dept. App. Div. order of 2/24/09; modification; leave to appeal granted by App. Div., 7/23/09; Rule 500.11 review pending; LABOR - SAFE PLACE TO WORK - SUMMARY JUDGMENT - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT "DEFENDANT MADE A PRIMA FACIE SHOWING OF ENTITLEMENT TO JUDGMENT AS A MATTER OF LAW DISMISSING THE LABOR LAW § 240(1) CLAIM BY DEMONSTRATING THAT THE

EFFECTS OF GRAVITY, WAS NOT CAUSED BY THE LIMITED TYPE OF ELEVATION-RELATED HAZARDS ENCOMPASSED BY THE STATUTE" AND THAT CLAIMANTS FAILED TO RAISE A TRIABLE ISSUE OF FACT TO REBUT THAT SHOWING;

Court of Claims granted defendant's motion for summary judgment dismissing the claims alleging violation of Labor Law §§ 240(1), 241(6) and 200, and common-law negligence; App. Div. modified by deleting the provision of the order granting those branches of the defendant's motion which were for summary judgment dismissing the Labor Law § 200 and common-law negligence claims, and substituting therefor a provision denying those branches of the motion, and affirmed the order as so modified.

MALIK, MATTER OF v STATE OF NEW YORK:

3RD Dept. App. Div. order of 1/22/09; affirmance; sua sponte examination whether any jurisdictional basis exists to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE;

Supreme Court, Chemung County denied petitioner's application for a writ of habeas corpus in a proceeding pursuant to CPLR article 70; App. Div. affirmed.

REOME (NATHAN), PEOPLE v:

4TH Dept. App. Div. order of 7/10/09; modification; leave to appeal granted by Hurlbutt, J., 8/13/09;

CRIMES - RAPE - CORROBORATION OF ACCOMPLICE TESTIMONY;

Onondaga County Court convicted defendant, upon a jury verdict, of three counts of rape in the first degree and one count of conspiracy in the fourth degree; App. Div. modified by directing that the sentences shall run concurrently with respect to each other.

SKELOS, et al. v PATERSON, et al.:

2ND Dept. App. Div. order of 8/20/09; affirmance; leave to appeal granted by App. Div., 8/20/09;

INJUNCTIONS - WHETHER THE APPELLATE DIVISION ERRED IN AFFIRMING SO MUCH OF A SUPREME COURT ORDER AS GRANTED PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ENJOINING DEFENDANT RICHARD RAVITCH FROM EXERCISING ANY OF THE POWERS OF THE OFFICE OF LIEUTENANT-GOVERNOR AND DENIED DEFENDANTS' CROSS MOTION TO DISMISS THE COMPLAINT IN AN ACTION FOR A PERMANENT INJUNCTION AND JUDGMENT DECLARING THAT THE GOVERNOR'S APPOINTMENT OF DEFENDANT RAVITCH AS LIEUTENANT-GOVERNOR IS UNCONSTITUTIONAL - PLAINTIFFS' STANDING-EFFECT OF CPLR 6311(1);

Supreme Court, Nassau County, among other things, granted plaintiffs' motion for an order preliminarily enjoining defendant Richard Ravitch from exercising any of the powers of the office of Lieutenant-Governor and denied defendants' cross motion to dismiss the complaint; App. Div. affirmed.