

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

August 28 through September 3, 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.

JENKINS v FIELDBRIDGE ASSOCIATES, LLC:

2ND Dept. App. Div. order of 4/7/09; reversal; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

LANDLORD AND TENANT - RENT REGULATION - CHALLENGE TO APPELLATE DIVISION ORDER HOLDING THAT CIVIL COURT OF THE CITY OF NEW YORK PROPERLY CONSIDERED A RENT REDUCTION ORDER ISSUED MORE THAN FOUR YEARS BEFORE THE FILING OF THE RENT OVERCHARGE COMPLAINT AND IN EFFECT WITHIN SUCH FOUR-YEAR PERIOD WHERE CPLR 213-a PRECLUDES "EXAMINATION OF THE RENTAL HISTORY OF THE [APARTMENT] PRIOR TO THE FOUR-YEAR PERIOD IMMEDIATELY PRECEDING THE COMMENCEMENT OF THE ACTION";

App. Term of the 2nd, 11th and 13th Judicial Districts reversed a 7/24/05 judgment of the Civil Court of the City of New York, Kings County, which, upon an order of the same court dated 1/16/04, granting that branch of plaintiff's motion which was for summary judgment on the cause of action to recover rent overcharges, and upon so much of a decision of the same court dated 12/20/04, made after a hearing, as found that the

defendant willfully overcharged him, and calculated rent overcharges and treble damages due him based on a rent of \$375.44 per month, was in favor of plaintiff and against defendant in the principal sum of \$22,852.06, and remitted the matter to the Civil Court of the City of New York, Kings County, for a recalculation of the rent overcharges and treble damages due plaintiff based on a rent of \$449.68 per month; App. Div. reversed and remitted to Civil Court for the entry of an appropriate amended judgment.

MCKINNON (DONALD), PEOPLE v:

1ST Dept. App. Div. order of 6/2/09; affirmance; leave to appeal granted by Lippman, Ch.J., 8/12/09;

CRIMES - ASSAULT - EVIDENCE OF "PERMANENT DISFIGUREMENT" PURSUANT TO PENAL LAW § 120.10(2) - SUFFICIENCY OF EVIDENCE TO SUPPORT CONVICTION OF ASSAULT IN THE FIRST DEGREE WHERE VICTIM DISPLAYED HER ARM TO THE JURY, BUT RECORD GIVES NO INDICATION OF WHAT THE JURY SAW;

Supreme Court, Bronx County convicted defendant, after a jury trial, of assault in the first degree, attempted kidnapping in the second degree and criminal possession of stolen property in the fifth degree, and sentenced him to consecutive terms of 25 years, 15 years and 1 year; App. Div. affirmed.

SCAPARO et al. v VILLAGE OF ILION, et al. (AND ANOTHER PROCEEDING):

4TH Dept. App. Div. order of 7/10/09; modification with dissents; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - LABOR LAW - INJURY TO VILLAGE EMPLOYEES INSTALLING SEWER LATERAL FROM CHURCH PROPERTY TO THE SEWER MAIN OVER PROPERTY OWNED BY THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (HCIDA) - WHETHER HCIDA OR CHURCH WAS OWNER WITHIN THE MEANING OF LABOR LAW § 241(6); PLAINTIFFS' ENTITLEMENT TO SUMMARY JUDGMENT ON LIABILITY UNDER LABOR LAW §§ 200 AND 241(6);

Supreme Court, Herkimer County granted the motion of defendant HCIDA seeking summary judgment, denied the motion of defendant Our Lady Queen of Apostles Church of St. Mary of Mount Carmel/S.S. Peter and Paul (the church) seeking summary judgment, and denied plaintiffs' cross motion seeking partial summary judgment; App. Div. modified by granting the motion of defendant church and dismissing the amended complaints in Actions 1 and 2 against that defendant.

TABB (CHRISTIAN), PEOPLE v:

4TH Dept. App. Div. order of 2/6/09; affirmance; leave to appeal granted by Jones, J., 8/12/09; Rule 500.11 review pending;

CRIMES - JURORS - NOTES FROM JURY - TRIAL COURT'S FAILURE TO NOTIFY COUNSEL OF JURY NOTES AND TO READ NOTES INTO THE RECORD; Supreme Court, Erie County convicted defendant, upon a jury verdict, of assault on a peace officer, police officer, fireman or emergency medical services professional, and assault in the second degree; App. Div. affirmed.