

COURT OF APPEALS NEW FILINGS

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

September 11 through September 17, 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.

DEBRA H. v JANICE R.:

1ST Dept. App. Div. order of 4/9/09; reversal; leave to appeal granted by Court of Appeals, 9/1/09;

PARENT AND CHILD - CUSTODY - VISITATION - WHETHER A PARTY WHO IS NOT THE CHILD'S BIOLOGICAL OR ADOPTIVE PARENT HAS STANDING TO SEEK CUSTODY AND VISITATION UNDER DOMESTIC RELATIONS LAW § 740 AS A PARENT UNDER EQUITABLE ESTOPPEL PRINCIPLES WHERE THE PARTY ALLEGEDLY ESTABLISHED A STRONG FAMILY BOND WITH THE CHILD WITH THE BIOLOGICAL PARENT'S ENCOURAGEMENT AND, AMONG OTHER THINGS, ENTERED INTO AN OUT-OF-STATE CIVIL UNION WITH THE BIOLOGICAL PARENT BEFORE THE CHILD'S BIRTH; STANDING; DUE PROCESS AND EQUAL PROTECTION;

Supreme Court, New York County granted a hearing on whether petitioner stands in loco parentis to respondent's biological child and whether respondent should be equitably estopped from denying that parental relationship, and appointed a law guardian to represent the child's best interests; App. Div. reversed, vacated the Supreme Court order, denied the petition and dismissed the proceeding.

EAST HAMPTON UNION FREE SCHOOL DISTRICT v SANDPEBBLE BUILDERS, INC, et al.:

2ND Dept. App. Div. order of 7/28/09; modification with dissents; sua sponte examination whether the order finally determines the action within the meaning of the Constitution;

CORPORATIONS - DISREGARDING CORPORATE ENTITY - CHALLENGE TO APPELLATE DIVISION ORDER GRANTING "THAT BRANCH OF THE DEFENDANTS' MOTION WHICH WAS PURSUANT TO CPLR 3211(a)(7) TO DISMISS THE COMPLAINT INSOFAR AS ASSERTED AGAINST THE DEFENDANT VICTOR CANSECO INDIVIDUALLY" - WHETHER COMPLAINT SUFFICIENTLY ALLEGES A CAUSE OF ACTION FOR LIABILITY AGAINST A CORPORATION'S PRESIDENT AND PRINCIPAL OWNER BASED ON THE DOCTRINE OF PIERCING THE CORPORATE VEIL;

Supreme Court, Suffolk County denied defendants' motion pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint insofar as asserted against defendant Victor Canseco individually; App. Div. modified by deleting the provision of the Supreme Court order denying that branch of defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against defendant Victor Canseco individually and substituting therefor a provision granting that branch of the motion, and affirmed the order as so modified.

LIGGINS (JASON D.), PEOPLE v:

4TH Dept. App. Div. order of 7/10/09; reversal with dissents; leave to appeal granted by Carni, J., 8/13/09; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - EMERGENCY EXCEPTION TO WARRANT REQUIREMENT;

Oneida County Court convicted defendant, upon a jury verdict, of two counts of criminal possession of a controlled substance in the third degree and two counts of criminally using drug paraphernalia in the second degree; App. Div. reversed, granted that part of the motion seeking to suppress tangible property, dismissed the indictment and remitted to County Court for further proceedings pursuant to CPL 470.45.

MCDADE (SUSAN), PEOPLE v:

3RD Dept. App. Div. order of 7/9/09; affirmance with dissents; leave to appeal granted by Stein, J., 8/5/09; Rule 500.11 review pending;

CRIMES - RAPE - WHETHER THERE WAS LEGALLY SUFFICIENT EVIDENCE OF PENETRATION TO SUPPORT DEFENDANT'S CONVICTION OF RAPE IN THE SECOND DEGREE;

Rensselaer County Court convicted defendant, upon a jury verdict, of rape in the second degree, sexual abuse in the second degree and endangering the welfare of an incompetent or physically disabled person; App. Div. affirmed and remitted to County Court for further proceedings pursuant to CPL 460.50(5).

MORTON et al. v STATE OF NEW YORK:

Stipulation of discontinuance of 5/7/09, bringing up for review prior nonfinal 2ND Dept. App. Div. order of 12/20/04; reversal; leave to appeal granted by Court of Appeals, 9/1/09; LABOR LAW - SAFE PLACE TO WORK - PLAINTIFF CONSTRUCTION WORKER, EMPLOYED BY NON-PARTY NEW YORK WATER SERVICE COMPANY, INJURED WHEN EXCAVATION WALL COLLAPSED DURING EMERGENCY REPAIRS ON UNDERGROUND WATER MAIN UNDER STATE-OWNED ROADWAY - STATE HAD NO KNOWLEDGE OF WORK BEING PERFORMED - WHETHER PLAINTIFF WAS WITHIN THE CLASS OF PERSONS PROTECTED UNDER LABOR LAW § 241(6); SUMMARY JUDGMENT;

Court of Claims denied defendant's cross motion for summary judgment dismissing the Labor Law § 241(6) claim; App. Div. reversed, granted that branch of defendant's cross motion which was for summary judgment dismissing the claim to recover damages for violation of Labor Law § 241(6), dismissed that claim, and vacated the 5/7/03 Court of Claims judgment in favor of claimant on the issue of liability; thereafter, plaintiffs stipulated to discontinue their Labor Law § 240 claim.

VERIZON NEW YORK, INC. v GARVIN et al. (AND ANOTHER ACTION):

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

NEGLIGENCE - MAINTENANCE OF PREMISES - ACTION SEEKING TO RECOVER DAMAGES FOR INJURY TO PLAINTIFF'S AERIAL CABLES SUSTAINED AS A RESULT OF A FIRE ON PROPERTY OWNED BY DEFENDANT LANDLORD - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT DEFENDANT WAS ENTITLED TO SUMMARY JUDGMENT BECAUSE HE ESTABLISHED THAT A TENANT'S CARELESS SMOKING CAUSED THE FIRE AND PLAINTIFF FAILED TO RAISE A TRIABLE ISSUE OF FACT AS TO WHETHER THE ALLEGED ABSENCE OF OPERABLE SMOKE DETECTORS WAS A SUBSTANTIAL FACTOR IN CAUSING THE FIRE TO SPREAD AND THUS DAMAGE ITS PROPERTY;

Supreme Court, Erie County denied defendant Paul J. Garvin's motion for summary judgment dismissing the complaint against him in action No. 2; App. Div. reversed, granted the motion by defendant Garvin for summary judgment in action No. 2 and dismissed the complaint against that defendant in that action.

