

COURT OF APPEALS NEW FILINGS

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

October 7 through October 14, 2011

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. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

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.

DEAN, et al. v TOWER INSURANCE COMPANY OF NEW YORK:

1st Dept. App. Div. order of 5/10/11; modification; leave to appeal granted by App. Div., 9/8/11; Rule 500.11 review pending; INSURANCE - DISCLAIMER OF COVERAGE - AMBIGUITY IN POLICY - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT A "RESIDENCE PREMISES" INSURANCE POLICY WAS AMBIGUOUS BECAUSE IT FAILED TO DEFINE THE WORD "RESIDES" FOR COVERAGE PURPOSES AND THE PLAINTIFFS PURCHASED THE POLICY IN ADVANCE OF CLOSING BUT WERE UNABLE TO FULFILL THEIR INTENTION OF ESTABLISHING RESIDENCY AT THE SUBJECT PREMISES DUE TO THEIR DISCOVERY AND REMEDIATION OF TERMITE DAMAGE - WHETHER AN ISSUE OF FACT EXISTED REGARDING PLAINTIFFS' MISREPRESENTATION OF THEIR INTENTION TO RESIDE IN THE SUBJECT PREMISES;

Supreme Court, New York County granted defendant's motion for summary judgment dismissing the complaint and denied plaintiffs' cross motion for summary judgment on liability; App. Div. modified by denying defendant's motion and reinstating the complaint.

FREDRICKSON, MATTER OF v NEW YORK CITY HOUSING AUTHORITY:

1st Dept. App. Div. order of 8/4/11; affirmance with dissents; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - LATE NOTICE - PETITIONER'S BURDEN OF ESTABLISHING THAT RESPONDENT ACQUIRED ACTUAL KNOWLEDGE OF THE ESSENTIAL FACTS OF THE CLAIM WITHIN A REASONABLE TIME AFTER THE CLAIM AROSE - GENERAL MUNICIPAL LAW § 50-e;

Supreme Court, Bronx County granted petitioner's motion for leave to serve a late notice of claim on respondent, nunc pro tunc, without the necessity of further physical service; App. Div. affirmed.

GEORGIA MALONE & COMPANY v ROSEWOOD REALTY GROUP, INC.:

1st Dept. App. Div. order of 7/7/11; modification with dissents; leave to appeal granted by App. Div., 9/29/11;

EQUITY - UNJUST ENRICHMENT - SUFFICIENCY OF PLEADING - NECESSITY TO PLEAD DIRECT CONTACT OR RELATIONSHIP BETWEEN PLAINTIFF AND DEFENDANT CAUSING PLAINTIFF'S RELIANCE OR INDUCEMENT;

Supreme Court, New York County dismissed the complaint as against defendant Ralph Rieder, and the unjust enrichment claim as against all defendants; App. Div. modified by reinstating the unjust enrichment claim as against defendants Ralph and Elie Rieder.

METZ, &c., et al. v STATE OF NEW YORK:

3RD Dept. App. Div. order of 7/14/11; modification; leave to appeal granted by App. Div., 9/27/11;

STATE - SOVEREIGN IMMUNITY - WHETHER THE STATE IS IMMUNE FROM LIABILITY FOR ALLEGEDLY NEGLIGENT SAFETY INSPECTION OF PUBLIC VESSEL - CHALLENGE TO APPELLATE DIVISION RULING THAT STATE FAILED TO ESTABLISH THAT SAFETY INSPECTORS ACTUALLY EXERCISED DISCRETION IN SETTING NUMBER OF PASSENGERS WHO COULD SAFELY TRAVEL ON PUBLIC VESSEL;

Court of Claims denied claimants' motion to dismiss defendant's affirmative defense of sovereign immunity and denied defendant's cross motion for summary judgment dismissing the claims; App. Div. modified by reversing so much of the Court of Claims order as denied claimants' motion to dismiss defendant's affirmative defense of sovereign immunity, granted the motion and dismissed that affirmative defense.