

COURT OF APPEALS NEW FILINGS

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

December 31, 2011 through January 5, 2012

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.

BAKER (TREVIS D.), PEOPLE v (APPEAL NOS. 1 and 2):

4TH Dept. App. Div. orders of 3/25/11; affirmance; leave to appeal granted by Smith, J., 12/21/11;

CRIMES - DISORDERLY CONDUCT (PENAL LAW § 240.20[3]) - PROBABLE CAUSE FOR ARREST - USE OF FOUL LANGUAGE IN PUBLIC IN CRITICIZING CONDUCT OF POLICE OFFICER - CONSTITUTIONALLY PROTECTED SPEECH; GUILTY PLEA;

Monroe County Court convicted defendant, upon his guilty pleas, of criminal possession of a controlled substance in the third degree and assault in the second degree; App. Div. affirmed.

BREADY et al. v CSX TRANSPORTATION, INC., et al.:

4TH Dept. App. Div. order of 11/10/11; reversal with dissents;
Rule 500.11 review pending;

NEGLIGENCE - WHAT CONSTITUTES - FOUR VEHICLE CHAIN REACTION
COLLISION - LIABILITY OF FIRST CAR LAWFULLY STOPPED AT
INTERSECTION FOR A RED LIGHT - FEDERAL EMPLOYERS' LIABILITY ACT
(FELA) (45 USC § 51 ET SEQ.) - STANDARD OF PROOF FOR NEGLIGENCE
AND PROXIMATE CAUSE UNDER FELA;

Supreme Court, Onondaga County denied the motion of defendant CSX
Transportation, Inc. (CSX) for summary judgment dismissing the
complaint and cross claim against it; App. Div. reversed, granted
CSX's motion and dismissed the complaint and cross claim as
against it.

CUNNINGHAM, MATTER OF v NEW YORK STATE DEPARTMENT OF LABOR:

3RD Dept. App. Div. judgment of 11/23/11; confirmation of
determination and dismissal of petition;

CIVIL SERVICE - TERMINATION OF EMPLOYMENT - CONSTITUTIONALITY OF
SEARCH CONDUCTED BY PUBLIC EMPLOYER BY PLACING GLOBAL POSITIONING
SYSTEM DEVICES ON EMPLOYEE'S CAR WITHOUT A WARRANT;

App. Div. confirmed a determination of the Commission of Labor
finding petitioner guilty of misconduct and terminating his
employment, and dismissed the CPLR article 78 petition.

HARRIS et al. v CSX TRANSPORTATION, INC., et al.:

4TH Dept. App. Div. order of 11/10/11; reversal with dissents;
Rule 500.11 review pending;

NEGLIGENCE - WHAT CONSTITUTES - FOUR VEHICLE CHAIN REACTION
COLLISION - LIABILITY OF FIRST CAR LAWFULLY STOPPED AT
INTERSECTION FOR A RED LIGHT - FEDERAL EMPLOYERS' LIABILITY ACT
(FELA) (45 USC § 51 ET SEQ.) - STANDARD OF PROOF FOR NEGLIGENCE
AND PROXIMATE CAUSE UNDER FELA;

Supreme Court, Onondaga County denied the motion of defendant CSX
Transportation, Inc. (CSX) for summary judgment dismissing the
complaint and cross claim against it; App. Div. reversed, granted
CSX's motion and dismissed the complaint and cross claim as
against it.

J. D'ADDARIO & COMPANY, INC. v EMBASSY INDUSTRIES, INC.:

2ND Dept. App. Div. order of 4/26/11; affirmance; leave to appeal
granted by Court of Appeals, 12/20/11;

INTEREST - PREJUDGMENT INTEREST - CPLR 5001(a) - WHETHER THE
PREJUDGMENT INTEREST AMOUNT WAS GOVERNED BY THE STATUTORY RATE
PURSUANT TO CPLR 5001(a) OR BY THE DEFAULT PROVISION OF THE
PARTIES' CONTRACT FOR THE SALE OF REAL PROPERTY;

Supreme Court, Suffolk County awarded judgment in favor of defendant and against plaintiff in the principal sum of \$650,000, plus prejudgment interest in the sum of \$224,538.27; thereafter, Supreme Court denied plaintiff's motion to vacate certain portions of the judgment; App. Div. dismissed as academic the appeal from so much of the judgment as awarded prejudgment interest in the sum of \$224,538.27, otherwise affirmed the judgment and reversed the order, granted plaintiff's motion, set aside the award of interest from 7/31/06, vacated so much of the judgment as awarded prejudgment interest in the sum of \$224,538.27, and remitted the matter to Supreme Court for entry of an appropriate amended judgment.

JOE (QUINTRELL), PEOPLE v:

4TH Dept. App. Div. order of 9/30/11; affirmance; leave to appeal granted by Graffeo, J., 12/16/11; Rule 500.11 review pending; CRIMES - APPEAL - APPEAL WAIVER IN CONNECTION WITH GUILTY PLEA - APPELLATE DIVISION DID NOT SPECIFY WHETHER ITS AFFIRMANCE OF DEFENDANT'S CONVICTION WAS BASED ON THE VALIDITY OF THE APPEAL WAIVER OR ITS REVIEW AND REJECTION OF DEFENDANT'S EXCESSIVE SENTENCE CLAIM;

Supreme Court, Onondaga County convicted defendant of criminal possession of a controlled substance in the second degree; App. Div. affirmed.

KAUR, &c., et al. v AMERICAN TRANSIT INSURANCE COMPANY, et al.:

1ST Dept. App. Div. order of 7/14/11; modification; leave to appeal granted by App. Div., 12/13/11; Rule 500.11 review pending;

ATTORNEY AND CLIENT - MALPRACTICE; SUCCESSOR LIABILITY - WHETHER DEFENDANT LAW FIRM MAY BE LIABLE FOR ALLEGED MALPRACTICE AS SUCCESSOR TO NORMAN VOLK & ASSOCIATES, P.C.; SUMMARY JUDGMENT; Supreme Court, New York County denied defendant Baker, McEvoy, Morrissey & Moskovitis, P.C.'s motion for summary judgment dismissing the complaint as against it; App. Div. modified to the extent of searching the record and granting partial summary judgment in favor of plaintiff on the issue of defendant Baker, McEvoy, Morrissey & Moskovits, P.C.'s successor liability.

MARTIN (DANNY), PEOPLE v:

1ST Dept. App. Div. order of 10/11/11; affirmance; leave to appeal granted by Freedman, J., 12/8/11; Rule 500.11 review pending;

CRIMES - EVIDENCE - SUPPRESSION HEARING - WHETHER THE EVIDENCE CONCERNING THE POLICE OFFICERS' INTERACTION WITH DEFENDANT ON THE STREET SUPPORTED A REASONABLE SUSPICION OF CRIMINALITY AND THE SUBSEQUENT DRUG SEIZURE AND ARREST;

Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the fourth degree, and sentenced him, as a second felony drug offender, to a term of 3 1/2 years; App. Div. affirmed.

REITANO, MATTER OF (CANGRO v ROSADO):

1ST Dept. App. Div. order of 11/15/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
GUARDIAN AND WARD - CONFIRMATION OF SPECIAL REFEREE'S REPORT AND APPROVAL AND JUDICIAL SETTLEMENT OF GUARDIAN'S AMENDED FINAL ACCOUNTING - CLAIMED ERRORS AND ABUSES IN GUARDIANSHIP PROCEEDINGS;

Supreme Court, New York County, among other things, confirmed a report of the special referee, and approved and judicially settled the amended final accounting of the guardian; App. Div. affirmed.

SPENCER (ANDREW), PEOPLE v:

2ND Dept. App. Div. order of 8/30/11; affirmance; leave to appeal granted by Ciparick, J., 12/28/11;
CRIMES - RIGHT OF CONFRONTATION - PROOF OF COMPLAINANT'S MOTIVE TO FABRICATE; FAIR TRIAL - TRIAL JUDGE'S ALLEGED DISPLAY OF ANTAGONISM AGAINST DEFENSE COUNSEL;

Supreme Court, Queens County convicted defendant of criminal possession of a weapon in the second degree, two counts of criminal possession of a weapon in the third degree, assault in the third degree, and menacing in the third degree, and imposed sentence; App. Div. affirmed.

YUSON (MORRIS B.), PEOPLE v:

4TH Dept. App. Div. order of 4/29/11; affirmance; leave to appeal granted by Smith, J., 12/20/11; Rule 500.11 review pending;
CRIMES - SENTENCE - POST-RELEASE SUPERVISION (PRS) - WHETHER PENAL LAW § 70.45(2)(e), PROVIDING FOR A MINIMUM POST-RELEASE SUPERVISION PERIOD OF ONE AND ONE-HALF YEARS, APPLIES TO A DEFENDANT WHO PLEADED GUILTY TO A CLASS D VIOLENT FELONY;
Monroe County Court convicted defendant, upon his guilty plea, of assault in the second degree; App. Div. affirmed.