

COURT OF APPEALS NEW FILINGS

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

July 2 through July 8, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

ABRAMS (EMAR), PEOPLE v:

3RD Dept. App. Div. order of 5/6/10; affirmance; leave to appeal granted by Ciparick, J., 6/29/10;

CRIMES - RIGHT TO COUNSEL - WHERE THE DISTRICT ATTORNEY WAS DISQUALIFIED DUE TO HIS PRIOR REPRESENTATION OF DEFENDANT, WHETHER SPECIAL PROSECUTOR'S CONSULTATION WITH DISTRICT ATTORNEY REGARDING THE GRANTING OF IMMUNITY TO OBTAIN VICTIM'S TESTIMONY WAS IMPROPER AND DEPRIVED DEFENDANT OF HIS RIGHT TO COUNSEL; WITNESSES - IMPEACHMENT - PROSECUTION'S USE OF VICTIM'S GRAND JURY TESTIMONY IDENTIFYING DEFENDANT AS THE PERPETRATOR TO IMPEACH WITNESS AT TRIAL - HARMLESS ERROR; ALLEGED SANDOVAL VIOLATION; SUMMARY DENIAL OF DEFENDANT'S CPL 330.30 MOTION; Supreme Court, Ulster 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, reckless endangerment in the first degree and two counts of endangering the welfare of a child; App. Div. affirmed.

CRAMPE (ALEXANDER), PEOPLE v:

Appellate Term, 9th and 10th Districts, order of 3/9/10;
affirmance; leave to appeal granted by Pigott, J., 6/15/10;
CRIMES - RIGHT TO REPRESENTATION PRO SE - RIGHT TO COUNSEL -
STANDBY COUNSEL - WHETHER THE TRIAL COURT ERRED IN ALLOWING
DEFENDANT TO REPRESENT HIMSELF - WHETHER DEFENDANT'S ACCESS TO
STANDBY COUNSEL WAS SO LIMITED AS TO BE AN INFRINGEMENT ON HIS
RIGHT TO COUNSEL OR DUE PROCESS;
Justice Court of the Town of Riverhead, Suffolk County, convicted
defendant of criminal possession of a controlled substance in the
seventh degree; App. Term affirmed.

GRONINGER v VILLAGE OF MAMARONECK:

2ND Dept. App. Div. order of 11/10/09; affirmance; leave to
appeal granted by App. Div., 6/15/10;
MUNICIPAL CORPORATIONS - SNOW AND ICE - APPLICABILITY OF PRIOR
WRITTEN NOTICE PROVISIONS OF VILLAGE LAW § 6-628 AND CPLR 9804 TO
VILLAGE PARKING LOT - WALKER v TOWN OF HEMPSTEAD (84 NY2d 360);
Supreme Court, Westchester County granted defendant's motion for
summary judgment dismissing the complaint; App. Div. affirmed.

JACOBS v MOSTOW, et al.:

2ND Dept. App. Div. orders of 6/1/10 and 5/14/10; denial of leave
to appeal or reargue; sua sponte examination whether App. Div.
orders finally determine the action with the meaning of the
Constitution and whether any jurisdictional basis otherwise
exists to support appeals as of right;
SCHOOLS - TEACHERS - ACTION ALLEGING WRONGFUL TERMINATION, BREACH
OF CONTRACT, FRAUD, PSYCHIATRIC MALPRACTICE AND IMPROPRIETIES AT
EDUCATION LAW § 3020-a HEARING RESULTING IN ALLEGED DUE PROCESS
VIOLATIONS AND DEFAMATION - CHALLENGE TO APPELLATE DIVISION ORDER
THAT, AMONG OTHER THINGS, AFFIRMED A SUPREME COURT JUDGMENT
DISMISSING COMPLAINT AGAINST VARIOUS DEFENDANTS FOR VARIOUS
REASONS, INCLUDING ARBITRATOR IMMUNITY, RES JUDICATA, PRIOR
ACTION PENDING (CPLR 3211[a][4]), STATUTE OF LIMITATIONS, FAILURE
TO STATE A CAUSE OF ACTION AND FAILURE TO COMPLY WITH PROCEDURAL
REQUIREMENTS GOVERNING CLAIMS AGAINST THE STATE;
Supreme Court, Nassau County, in two separate orders (one upon
which judgment was entered), granted those branches of
defendants' motions to dismiss the complaints as asserted against
them; App. Div. affirmed in two separate orders and thereafter
denied plaintiff's motions for, among other things, reargument or
leave to appeal to the Court of Appeals.

KATHLEEN K., MATTER OF (ANONYMOUS):

2ND Dept. App. Div. order of 3/30/10; dismissal and affirmance;
leave to appeal granted by Court of Appeals, 6/24/10;
PARENT AND CHILD - TERMINATION OF PARENTAL RIGHTS - WHETHER
FAMILY COURT ERRED IN DENYING FATHER THE RIGHT TO REPRESENT
HIMSELF AT HEARING ON TERMINATION OF PARENTAL RIGHTS;

Family Court, Suffolk County (1) in related proceedings pursuant to Social Services Law § 384-b and child protective proceedings, changed the permanency plan for father's two daughters to "placement for adoption" and extended the children's placement (1/22/09 order); (2) after a hearing, found that father permanently neglected the children (5/7/09 order); and (3) terminated father's parental rights on the ground of permanent neglect and transferred guardianship and custody of the children to the Suffolk County Department of Social Services (6/2/09 order); App. Div. dismissed the appeal from the 1/22/09 order as abandoned, dismissed the appeal from the 5/7/09 fact-finding order as that order was superseded by the order of disposition, and affirmed the 6/2/09 order of disposition terminating father's parental rights.

LOMBARDO v MASTEC NORTH AMERICA, INC., et al.:

2ND Dept. App. Div. order of 4/22/10; denial of reargument; 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;

MOTIONS AND ORDERS - REARGUMENT OR RENEWAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PLAINTIFFS' MOTION TO REARGUE AN APPEAL DECIDED BY THE APPELLATE DIVISION IN AN ORDER GRANTING SUMMARY JUDGMENT DISMISSING THE COMPLAINT AS AGAINST ONE DEFENDANT;

Supreme Court, Kings County denied that branch of defendant Queens Network Cable's motion which was for summary judgment dismissing the complaint insofar as asserted against it; App. Div. reversed and granted that branch of the motion which was for summary judgment dismissing the complaint insofar as asserted against Queens Network Cable; thereafter, App. Div. denied plaintiffs' motion for reargument.

MCKNIGHT (ULYSESS), PEOPLE v:

2ND Dept. App. Div. order of 4/13/10; affirmance; leave to appeal granted by Lippman, Ch.J., 6/25/10;

CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER CONSECUTIVE SENTENCES WERE ILLEGAL UNDER PENAL LAW § 70.25(1) WHERE DEFENDANT WAS CONVICTED OF THE ATTEMPTED MURDER OF ONE VICTIM AND THE MURDER OF A FIRST VICTIM - BYSTANDER KILLED BY STRAY BULLETS - "SEPARATE AND DISTINCT ACT";

Supreme Court, Kings County convicted defendant of murder in the second degree and attempted murder in the second degree, and imposed sentence; App. Div. affirmed.

OYAGUE v INCORPORATED VILLAGE OF MALVERNE, et al.:

2ND Dept. App. Div. order of 9/17/09; denial of motion; sua sponte examination whether the order finally determines the action within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

APPEAL - DISMISSAL - MOTION TO VACATE DISMISSAL OF APPEAL BY APPELLATE DIVISION; ACTION FOR ASSAULT AND BATTERY AND FALSE ARREST;

Supreme Court, Nassau County denied plaintiff's motion for summary judgment, granted defendants' cross motion for summary judgment dismissing the complaint to the extent of dismissing the cause of action for arrest and otherwise denied defendants' cross motion; App. Div. dismissed the appeal for failure to perfect; thereafter, App. Div. denied plaintiff's motion to vacate so much of that court's order as dismissed the appeal for failure to perfect and, in a later order, denied so much of plaintiff's motion as sought to "[a]mend the appeal ... to give [appellant] the opportunity ... to correct his appeal deficiencies";

PERL, et al. v MEHER, et al.:

2ND Dept. App. Div. order of 6/8/10; reversal with dissents; Rule 500.11 review pending;

INSURANCE - NO-FAULT AUTOMOBILE INSURANCE - SERIOUS INJURY - WHETHER THE AFFIDAVIT OF PLAINTIFF'S TREATING PHYSICIAN RAISED A QUESTION OF FACT TO DEFEAT SUMMARY JUDGMENT IN PERSONAL INJURY ACTION ARISING OUT OF MOTOR VEHICLE ACCIDENT - "SERIOUS INJURY" WITHIN THE MEANING OF INSURANCE LAW § 5102(d); SUMMARY JUDGMENT; DISMISSAL AND NONSUIT;

Supreme Court, Kings County denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed and granted defendants' motion.

ROBINSON (TERRANCE D.), PEOPLE v:

3RD Dept. App. Div. order of 1/7/10; affirmance; leave to appeal granted by Smith, J., 6/23/10; Rule 500.11 review pending;

CRIMES - POSSESSION OF WEAPON - AUTOMOBILE DRIVER CHARGED WITH POSSESSION OF GUN FOUND UNDER DRIVER'S SEAT - TRIAL COURT'S LIMITATION OF DEFENDANT'S DIRECT EXAMINATION - CLAIMED DUE PROCESS VIOLATION; HARMLESS ERROR; SUPPRESSION OF WEAPON - INVENTORY SEARCH;

Columbia County Court convicted defendant, after a jury trial, of criminal possession of a weapon in the third degree; App. Div. affirmed.

ROSYLN UNION FREE SCHOOL DISTRICT v BARKAN, et al.:

2ND Dept. App. Div. order of 3/2/10; affirmance; leave to appeal granted by Court of Appeals, 6/24/10;

LIMITATION OF ACTIONS - APPLICABILITY OF SIX-YEAR STATUTE OF LIMITATIONS EITHER UNDER CPLR 213(7) OR CPLR 213(5) TO SCHOOL DISTRICT'S CAUSES OF ACTION FOR NEGLIGENT BREACH OF FIDUCIARY DUTY AGAINST FORMER SCHOOL BOARD MEMBER; PLEADING - SUFFICIENCY OF PLEADING - WHETHER COMPLAINT STATED A CAUSE OF ACTION FOR AN ACCOUNTING AGAINST FORMER BOARD MEMBER ENTRUSTED WITH OVERSIGHT OVER THE SCHOOL DISTRICT'S MONEY;

Supreme Court, Nassau County granted defendant Carol Margaritis's motion pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint insofar as asserted against her; App. Div. affirmed.

SIMON et al. v USHER, et al.:

1ST Dept. App. Div. order of 5/4/10; reversal; leave to appeal granted by App. Div., 6/29/10; Rule 500.11 review pending;
TRIAL - PLACE OF TRIAL - CHANGE OF VENUE - TIMELINESS OF MOTION TO CHANGE VENUE - APPLICABILITY OF FIVE-DAY EXTENSION UNDER CPLR 2103(b)(2) TO TIME PERIOD BY WHICH DEFENDANT MUST MOVE FOR CHANGE OF VENUE UNDER CPLR 511(b);

Supreme Court, Bronx County granted motion by defendants Usher, Chait, Hartsdale Medical Group, P.C. and White Plains Hospital Center to change venue from Bronx County to Westchester County; App. Div. reversed and denied the motion.

THOMAS (DANIEL), PEOPLE v:

1ST Dept. App. Div. order of 12/29/09; affirmance; leave to appeal granted by Catterson, J., 6/15/10; Rule 500.11 review pending;

CRIMES - IDENTIFICATION OF DEFENDANT - BOLSTERING OF SINGLE EYEWITNESS BY PERMITTING TESTIMONY CONCERNING THE WITNESS'S OUT-OF-COURT IDENTIFICATION OF A CO-DEFENDANT; HARMLESS ERROR;
Supreme Court, New York County, after a jury trial, convicted defendant of robbery in the second degree, and sentenced him to a term of 8 years; App. Div. affirmed.