

COURT OF APPEALS NEW FILINGS

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

February 18 through February 24, 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 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.

EANES v STATE OF NEW YORK:

3RD Dept. App. Div. order of 11/4/10; affirmance; leave to appeal granted by Court of Appeals, 2/10/11; Rule 500.11 review pending; STATE - CLAIM AGAINST STATE - UNLAWFUL INCARCERATION - CLAIM ALLEGING THAT THE STATE UNLAWFULLY IMPRISONED CLAIMANT DURING THE TERM OF HER POSTRELEASE SUPERVISION (PRS) AND DURING HER SUBSEQUENT INCARCERATION FOR VIOLATING THE TERMS OF HER PRS - WHETHER DEFENDANT STATE OF NEW YORK IS PRIVILEGED FROM CIVIL LIABILITY WHEN THE DEPARTMENT OF CORRECTIONAL SERVICES (DOCS) ADMINISTRATIVELY IMPOSED A STATUTORILY MANDATED PERIOD OF PRS THAT WAS NOT PRONOUNCED BY THE SENTENCING COURT; Court of Claims, among other things, granted defendant's cross motion for summary judgment dismissing the claim; App. Div. affirmed.

FORECLOSURE OF TAX LIENS BY ORANGE COUNTY COMMISSIONER OF FINANCE, MATTER OF v HELSETH:

2ND Dept. App. Div. order of 5/18/10; affirmance; leave to appeal granted by Court of Appeals, 2/15/11;

TAXATION - TAX LIENS - FORECLOSURE OF TAX LIENS - ADEQUACY OF NOTICE TO FORMER PROPERTY OWNERS OF OPPORTUNITY TO PAY DELINQUENT REAL PROPERTY TAXES AND FEES TO RELEASE THE COUNTY'S INTEREST IN THE FORECLOSED PROPERTY;

Supreme Court, Orange County, in effect, granted that branch of respondents' motion to allow them to pay back taxes and interest due with respect to their property to the extent of vacating the notice to redeem dated 6/12/08, and directed petitioner to re-serve the notice to redeem by certified and ordinary mail; App. Div. affirmed.

ORELLANES v STATE OF NEW YORK:

3RD Dept. App. Div. order of 11/4/10; affirmance; leave to appeal granted by Court of Appeals, 2/10/11; Rule 500.11 review pending;

STATE - CLAIM AGAINST STATE - UNLAWFUL INCARCERATION - CLAIM ALLEGING THAT THE STATE UNLAWFULLY IMPRISONED CLAIMANT FOR VIOLATING THE TERMS OF HIS POSTRELEASE SUPERVISION (PRS) - WHETHER DEFENDANT STATE OF NEW YORK IS PRIVILEGED FROM CIVIL LIABILITY WHEN THE DEPARTMENT OF CORRECTIONAL SERVICES (DOCS) ADMINISTRATIVELY IMPOSED A STATUTORILY MANDATED PERIOD OF PRS THAT WAS NOT PRONOUNCED BY THE SENTENCING COURT;

Court of Claims, among other things, granted defendants' motion for summary judgment dismissing the claim; App. Div. affirmed.

ORTIZ v STATE OF NEW YORK:

3RD Dept. App. Div. order of 11/4/10; affirmance; leave to appeal granted by Court of Appeals, 2/10/11; Rule 500.11 review pending;

STATE - CLAIM AGAINST STATE - UNLAWFUL INCARCERATION - CLAIM ALLEGING THAT THE STATE UNLAWFULLY IMPRISONED CLAIMANT FOR VIOLATING THE TERMS OF HIS POSTRELEASE SUPERVISION (PRS) - WHETHER DEFENDANT STATE OF NEW YORK IS PRIVILEGED FROM CIVIL LIABILITY WHEN THE DEPARTMENT OF CORRECTIONAL SERVICES (DOCS) ADMINISTRATIVELY IMPOSED A STATUTORILY MANDATED PERIOD OF PRS THAT WAS NOT PRONOUNCED BY THE SENTENCING COURT;

Court of Claims denied claimant's application pursuant to Court of Claims Act § 10(6) for permission to file a late notice of claim; App. Div. affirmed.

OVITZ v BLOOMBERG, L.P., et al.:

1ST Dept. App. Div. order of 10/21/10; reversal; leave to appeal granted by Court of Appeals, 2/17/11;

CONTRACTS - AUTOMATIC RENEWAL OF SUBSCRIBER CONTRACT - WHETHER A PRIVATE RIGHT OF ACTION EXISTS PURSUANT TO GENERAL OBLIGATIONS LAW §§ 5-901 AND 5-903 REGARDING REQUIRED RENEWAL NOTICE, AND WHETHER PLAINTIFF STATED A CLAIM UNDER GENERAL BUSINESS LAW § 349 WHERE PLAINTIFF WAS NOT DECEIVED IN NEW YORK; CLASS ACTION;

Supreme Court, New York County denied so much of defendants' motion to dismiss the complaint as sought dismissal of the first, fifth and sixth causes of action; App. Div. reversed, granted in its entirety defendants' motion to dismiss the complaint, and dismissed the complaint.

POSNER v LEWIS et al.:

1ST Dept. App. Div. order of 12/9/10; affirmance with dissents; leave to appeal granted by App. Div., 2/15/11;

TORTS - PRIMA FACIE TORT - TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS - CLAIM FOR DAMAGES AS A RESULT OF DENIAL OF ELEMENTARY SCHOOL TEACHER'S APPLICATION FOR TENURE;

Supreme Court, New York County denied defendants' motion to dismiss the complaint; App. Div. affirmed.