

COURT OF APPEALS NEW FILINGS

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

June 17 through June 23, 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.

BAYGOLD ASSOCIATES, INC. v CONGREGATION YETEV LEV OF MONSEY, INC.
(AND ANOTHER ACTION):

2ND Dept. App. Div. order of 2/15/11; dismissal and affirmance;
leave to appeal granted by Court of Appeals, 6/9/11;

LANDLORD AND TENANT - WHETHER A TENANT IS ENTITLED TO EQUITABLE
RELIEF WHERE IT HAS FAILED TO COMPLY STRICTLY WITH THE RENEWAL
PROVISIONS IN ITS LEASE;

Supreme Court, Rockland County dismissed the complaint in Action
No. 1 and declared that (a) Baygold Associates, Inc. did not
renew its lease for the subject premises, (b) its lease, and any
subleases thereunder, expired on 9/30/07, and (c) it had no
contractual or possessory interest in the subject premises, other
than that arising from a month-to-month tenancy; App. Div., among
other things, dismissed the appeal by plaintiff in Action No. 2
for lack of aggrievement, and affirmed the judgment insofar as
appealed from by plaintiff in Action No. 1.

CASS (MICKEY), PEOPLE v:

2ND Dept. App. Div. order of 12/7/10; affirmance; leave to appeal granted by Graffeo, J., 6/8/11;

CRIMES - EVIDENCE - PRIOR BAD ACTS - WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE DEFENDANT'S STATEMENT REGARDING HIS ROLE IN A PRIOR HOMICIDE WHERE ANOTHER MALE VICTIM WAS STRANGLED, FOR THE PURPOSE OF DISPROVING DEFENDANT'S CLAIM THAT HE WAS ACTING UNDER THE INFLUENCE OF EXTREME EMOTIONAL DISTURBANCE WHEN HE STRANGLED THE VICTIM IN THIS CASE; CLAIMED VIOLATION OF DUE PROCESS AND INEFFECTIVE ASSISTANCE OF COUNSEL; Supreme Court, Kings County convicted defendant, upon a jury verdict, of murder in the second degree, and imposed sentence; App. Div. affirmed.

GLOBAL REINSURANCE CORPORATION - U.S. BRANCH &c. v
EQUITAS, LTD., et al.:

1ST Dept. App. Div. order of 1/18/11; reversal; leave to appeal granted by App. Div., 6/7/11;

INSURANCE - REINSURANCE - ACTION BY REINSURANCE COMPANY SEEKING RELIEF FOR, AMONG OTHER THINGS, CONSPIRACY TO VIOLATE NEW YORK'S ANTITRUST LAW (GENERAL BUSINESS LAW § 340 et seq. [THE DONNELLY ACT]), AND INJUNCTIVE RELIEF; RETROCESSIONAL REINSURANCE - CLAIMS HANDLING AND PREMIUMS CHARGED;

Supreme Court, New York County dismissed the second amended complaint; App. Div. reversed and reinstated the complaint.

INGRAM (TECOY), PEOPLE v:

4TH Dept. App. Div. order of 2/10/11; affirmance; leave to appeal granted by Ciparick, J., 6/6/11;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - TRAFFIC STOP - WHETHER DRUGS RECOVERED FROM DEFENDANT AND STATEMENTS HE MADE TO POLICE AFTER HIS ARREST FOR FALSE PERSONATION (PENAL LAW § 190.23) SHOULD HAVE BEEN SUPPRESSED UPON THE GROUND THAT HE WAS UNLAWFULLY DETAINED;

Supreme Court, Onondaga County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree; App. Div. affirmed.

KENT (JAMES D.), PEOPLE v:

2ND Dept. App. Div. order of 10/12/10; affirmance; leave to appeal granted by Jones, J., 6/10/11;

CRIMES - PROMOTING (INCLUDING PROCURING) A SEXUAL PERFORMANCE BY A CHILD (PENAL LAW § 263.15) - POSSESSING A SEXUAL PERFORMANCE BY A CHILD (PENAL LAW § 263.16) - LEGAL SUFFICIENCY OF EVIDENCE BASED UPON DIGITAL COMPUTER IMAGES OBTAINED FROM DEFENDANT'S WORK COMPUTER; INDICTMENT - AMENDMENT - WHETHER AMENDMENT AT CLOSE OF PEOPLE'S CASE TO CHANGE DATE OF CRIME RELATING TO CHILD PORNOGRAPHY VIDEO MATERIALLY CHANGED THE PROSECUTION'S THEORY THAT DEFENDANT USED HIS OFFICE COMPUTER TO PROCURE THE VIDEO; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO MOVE TO SUPPRESS EVIDENCE COLLECTED FROM THE HARD DRIVE OF DEFENDANT'S COMPUTER;

Dutchess County Court convicted defendant of 2 counts of promoting a sexual performance by a child and 134 counts of possessing a sexual performance by a child, after a nonjury trial, and imposed sentence; App. Div. affirmed.

LIDEN (SCOTT), PEOPLE v:

1ST Dept. App. Div. order of 12/21/10; affirmance; leave to appeal granted by Court of Appeals, 5/3/11;
CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT - DETERMINATION BY BOARD OF EXAMINERS OF SEX OFFENDERS (BOARD) THAT PERSON MUST REGISTER AS A SEX OFFENDER ON THE BASIS OF AN OUT-OF-STATE CONVICTION - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT THE BOARD'S DETERMINATION IS REVIEWABLE ONLY IN A CPLR ARTICLE 78 PROCEEDING AND THAT SUPREME COURT LACKED JURISDICTION TO MAKE A DIFFERENT DETERMINATION WITH RESPECT TO THE REGISTRATION REQUIREMENT - ALLEGED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS; CHALLENGE TO RELIABILITY OF HEARSAY EVIDENCE SUPPORTING A LEVEL THREE DESIGNATION;
Supreme Court, New York County determined that, absent an article 78 proceeding, it did not have jurisdiction to review the determination of the Board of Examiners of Sex Offenders that defendant is required to register as a sex offender on the basis of an out-of-state conviction and, in a separate order, adjudicated defendant a level three sex offender; App. Div. affirmed.

MAKI v BASSETT HEALTHCARE, et al.:

3RD Dept. App. Div. order of 5/6/11; denial of motion; 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;
CONTEMPT - APPELLATE DIVISION DENIED APPELLANT'S MOTION FOR CONTEMPT;
App. Div. denied appellant's motion for contempt.

OVADIA, et al., MATTER OF v OFFICE OF THE INDUSTRIAL BOARD OF APPEALS, et al.:

1ST Dept. App. Div. order of 2/8/11; confirmed determination; leave to appeal granted by Court of Appeals, 6/7/11;
EMPLOYMENT RELATIONSHIPS - WAGES - CPLR ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION OF THE INDUSTRIAL BOARD OF APPEALS AFFIRMING AN ORDER OF THE COMMISSIONER OF LABOR DIRECTING PETITIONERS TO PAY THE CLAIMANTS' UNPAID WAGES - WHETHER THE GENERAL CONTRACTOR ON A PRIVATE CONSTRUCTION SITE WAS THE "EMPLOYER" OF A SUBCONTRACTOR'S WORKERS AND THEREFORE LIABLE TO THOSE WORKERS FOR UNPAID WAGES WHEN THE SUBCONTRACTOR DISAPPEARED;
App. Div. confirmed the determination of respondent Industrial Board of Appeals, denied the petition, and dismissed the proceeding.

PERRY (JAMES), PEOPLE v:

2ND Dept. App. Div. order of 2/1/11; modification; leave to appeal granted by Graffeo, J., 5/9/11;
CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST TO CHARGE CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE AS A LESSER INCLUDED OFFENSE OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE; Supreme Court, Kings County convicted defendant of criminally negligent homicide and criminal possession of a weapon in the second degree, upon a jury verdict, and imposed sentence; App. Div. modified by vacating the conviction of criminal possession of a weapon in the second degree and vacating the sentence imposed thereon, remitted the matter to Supreme Court for a new trial on that count, and affirmed as so modified.

RAMOS (LUIS), PEOPLE v:

2ND Dept. App. Div. order of 1/18/11; affirmance; leave to appeal granted by Lippman, Ch.J., 6/14/11;
CRIMES - MANSLAUGHTER - SUFFICIENCY OF THE EVIDENCE TO ESTABLISH DEFENDANT'S GUILT OF MANSLAUGHTER IN THE FIRST DEGREE (PENAL LAW § 125.20[1]);
Supreme Court, Kings County convicted defendant of manslaughter in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

REID (LAMARR), PEOPLE v:

2ND Dept. App. Div. order of 3/31/11; reversal; leave to appeal granted by Pigott, J., 6/16/11;
CRIMES - RIGHT OF CONFRONTATION - ALLEGED BRUTON VIOLATION - WHETHER DEFENDANT OPENED THE DOOR TO ADMISSION OF TESTIMONY THAT OTHERWISE WOULD HAVE BEEN BARRED BY THE CONFRONTATION CLAUSE; Albany County Court convicted defendant, upon a jury verdict, of murder in the second degree; App. Div. reversed and remitted to County Court for a new trial.

VANDOVER (JEANNE M.), PEOPLE v:

App. Term, 9th and 10th Judicial Districts, order of 4/1/11; affirmance; leave to appeal granted by Pigott, J., 6/7/11;
MOTOR VEHICLES - OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS - SUPPRESSION OF RESULTS OF BLOOD ALCOHOL TEST AND DEFENDANT'S STATEMENTS TO POLICE - LEGAL SUFFICIENCY OF PEOPLE'S EVIDENCE ESTABLISHING PROBABLE CAUSE FOR DEFENDANT'S ARREST; Justice Court of the Town of Hamptonburgh, Orange County, granted defendant's motion to suppress evidence and, upon suppression, dismissed the accusatory instruments; App. Term affirmed.