

COURT OF APPEALS NEW FILINGS

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

January 20, 2012 through January 26, 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.

EAST MIDTOWN PLAZA HOUSING COMPANY, INC. v CUOMO &c., et al.:
1ST Dept. App. Div. order of 6/14/11; affirmance; leave to appeal granted by Court of Appeals, 1/10/12;
CONDOMINIUMS AND COOPERATIVES - COOPERATIVE APARTMENTS -
PROCEEDING TO COMPEL APPROVAL AND ACCEPTANCE OF AMENDMENT TO
COOPERATIVE OFFERING PLAN - WHETHER ARTICLE 23-A OF THE GENERAL
BUSINESS LAW APPLIES TO PETITIONER'S PLAN TO WITHDRAW FROM THE
MITCHELL-LAMA PROGRAM AND RECONSTITUTE AS A PRIVATE COOPERATIVE -
UNTRUE OR MISLEADING STATEMENT IN AMENDMENT TO OFFERING PLAN AS
BASIS FOR ATTORNEY GENERAL'S REJECTION OF AMENDMENT; RATIONALITY
OF METHOD FOR COUNTING DISSOLUTION VOTES - ONE VOTE PER APARTMENT
RATHER THAN ONE VOTE PER SHARE - AGENCY RULE REQUIRING "APPROVAL
OF TWO-THIRDS OF OUTSTANDING SHARES" - BUSINESS CORPORATION LAW
§ 1001;

Supreme Court, New York County denied East Midtown Plaza Company, Inc.'s petition to compel, among other things, the New York City Department of Housing Preservation and Development to approve its plan to privatize a Mitchell-Lama development and to compel the Attorney General of the State of New York to accept for filing petitioner's second amendment to a cooperative offering plan, and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

NESBITT (AKIEME), PEOPLE v:

1ST Dept. App. Div. order of 11/3/11; affirmance with dissents; leave to appeal granted by Renwick, J., 1/17/12;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - FAILURE TO PRESENT DEFENSE TO ASSAULT CHARGES OR REQUEST SUBMISSION OF LESSER INCLUDED OFFENSES - SERIOUS INJURY;

Supreme Court, New York County convicted defendant, after a jury trial, of two counts of assault in the first degree, and sentenced him, as a second violent felony offender, to concurrent terms of 25 years; App. Div. affirmed.

PALMER (MICHAEL), PEOPLE v:

2ND Dept. App. Div. order of 10/4/11; affirmance; leave to appeal granted by Court of Appeals, 1/17/12;

CRIMES - SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ART. 6-C) - WHETHER DEFENDANT'S USE OF ALCOHOL AT THE TIME OF THE OFFENSE, WITHOUT MORE, CAN CONSTITUTE CLEAR AND CONVINCING EVIDENCE OF DRUG OR ALCOHOL ABUSE UNDER SORA RISK FACTOR 11;

Supreme Court, Kings County, after a hearing pursuant to Correction Law article 6-C, designated defendant a level two sex offender; App. Div. affirmed.

WILD et al. &c. v CATHOLIC HEALTH SYSTEM, et al.:

4TH Dept. App. Div. order of 6/17/11; modification; leave to appeal granted by Court of Appeals, 1/10/12;

PHYSICIANS AND SURGEONS - MEDICAL MALPRACTICE - WHETHER THE TRIAL COURT FAILED TO PROPERLY INSTRUCT THE JURY WITH RESPECT TO THE ELEMENT OF PROXIMATE CAUSE - "SUBSTANTIAL CHANCE DOCTRINE";

Supreme Court, Erie County awarded plaintiffs money damages against defendants Buffalo Emergency Associates, LLP and Raquel Martin, D.O.; App. Div. modified by granting that part of the post-trial motion to set aside the verdict and for a new trial with respect to the award of damages for loss of consortium only, and granted a new trial on that element of damages only unless plaintiffs stipulated to reduce the award of damages for loss of consortium to \$200,000.