

COURT OF APPEALS NEW FILINGS

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

October 15 through October 21, 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.

ARFA, et al. v ZAMIR, et al.:

1ST Dept. App. Div. order of 7/13/10; reversal; leave to appeal granted by App. Div., 10/12/10;

FRAUD - RELIANCE - ALLEGED FRAUD RELATED TO PURCHASE OF REAL ESTATE - WHETHER FRAUD CAUSE OF ACTION FALLS WITHIN SCOPE OF GENERAL RELEASE IN PARTIES' "GOVERNANCE OF ENTITIES" AGREEMENT; CONTRACTS;

Supreme Court, New York County, among other things, denied the motion of defendants Zamir and Zamir Properties, Inc. to dismiss the fifth cause of action of the verified second amended complaint; App. Div. reversed and granted the motion of defendants Zamir and Zamir Properties, Inc.

SASHA B., MATTER OF:

1ST Dept. App. Div. order of 5/20/10; affirmance and dismissal; leave to appeal granted by App. Div., 10/5/10;
PARENT AND CHILD - ABUSED OR NEGLECTED CHILD - SUFFICIENCY OF THE EVIDENCE - CORROBORATION OF OUT-OF-COURT STATEMENTS;
Family Court, Bronx County, upon a fact-finding determination that respondent mother neglected the subject child, among other things, placed the child in the custody of the Commissioner of Social Services pending the completion of the next permanency hearing; App. Div. affirmed insofar as the order appealed brought up for review the fact-finding determination, and otherwise dismissed the appeal as moot.

CRUZ (MANUEL), PEOPLE v:

Supreme Court, Bronx County order of 7/23/10; sua sponte examination whether there is any jurisdictional basis for this appeal taken as of right in a criminal matter;
APPEAL - APPEAL AS OF RIGHT IN CRIMINAL MATTER - VACATUR OF GUILTY PLEA;
Supreme Court dismissed defendant's motion to vacate his plea of guilty to criminal possession of a controlled substance in the fourth degree.

CUOMO, PEOPLE &c by v FIRST AMERICAN CORPORATION, et al.:

1ST Dept. App. Div. order of 6/8/10; affirmance; leave to appeal granted by App. Div., 10/5/10;
STATUTES - FEDERAL PREEMPTION - RESIDENTIAL REAL ESTATE APPRAISALS - WHETHER (1) THE HOME OWNER'S LENDING ACT OF 1933 (12 USC § 1461 ET SEQ.), (2) THE FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989 (Pub. L 101-73, 103 Stat 183), AND (3) THE REGULATIONS AND GUIDELINES IMPLEMENTED PURSUANT THERETO PREEMPT STATE REGULATIONS IN THE FIELD OF REAL ESTATE APPRAISALS; ATTORNEY GENERAL - ENJOINING FRAUDULENT OR ILLEGAL ACTS - WHETHER THE COMPLAINT STATES A CAUSE OF ACTION UNDER GENERAL BUSINESS LAW § 349 WITH RESPECT TO ALLEGEDLY FRAUDULENT RESIDENTIAL REAL ESTATE APPRAISALS;
Supreme Court, New York County denied defendants' motion to dismiss the complaint; App. Div. affirmed.

ELRAC, MATTER OF v EXUM:

1ST Dept. App. Div. order of 5/4/10; reversal; leave to appeal granted by App. Div., 10/5/10;
INSURANCE - AUTOMOBILE INSURANCE - UNINSURED MOTORIST ENDORSEMENT - EMPLOYEE DRIVING MOTOR VEHICLE OWNED BY SELF-INSURED EMPLOYER IN ACCIDENT WITH UNINSURED MOTORIST - UNINSURED MOTORIST CLAIM ASSERTED BY EMPLOYEE AGAINST EMPLOYER - WHETHER EXCLUSIVITY PROVISIONS OF WORKERS' COMPENSATION LAW PRECLUDE EMPLOYEE FROM ARBITRATING CLAIM AGAINST EMPLOYER;
Supreme Court, Bronx County granted the petition and permanently stayed the arbitration; App. Div. reversed and denied petition to stay arbitration.

HOLLAND (DAVID), PEOPLE v:

1ST Dept. App. Div. order of 6/10/10; reversal; leave to appeal granted by Tom, J., 9/23/10; Rule 500.11 review pending;
CRIMES - SUPPRESSION HEARING - EVIDENCE SEIZED AFTER POLICE STOP - WHETHER ANY ALLEGEDLY UNLAWFUL POLICE CONDUCT IN STOPPING AND QUESTIONING DEFENDANT WAS ATTENUATED BY DEFENDANT'S ACTION IN STRIKING ONE OFFICER;
Supreme Court, New York County granted defendant's motion to suppress physical evidence and statements; App. Div. reversed, denied defendant's motion and remanded the matter for further proceedings.

RAVILLE v ELNOMANY:

2ND Dept. App. Div. order of 8/3/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
HUSBAND AND WIFE - DIVORCE - CONSTRUCTIVE ABANDONMENT (DOMESTIC RELATIONS LAW § 170[2]); EQUITABLE DISTRIBUTION; CLAIMED INEFFECTIVENESS OF COUNSEL;
Supreme Court, Westchester County granted plaintiff's application to preclude defendant from offering financial evidence at a hearing on equitable distribution, awarded plaintiff a divorce on the ground of constructive abandonment and awarded plaintiff certain equitable distribution; App. Div. affirmed.