

COURT OF APPEALS NEW FILINGS

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

March 18 through March 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 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.

AMERICO PELLECHIA v PARTNER AVIATION ENTERPRISES, INC., &c.:
2ND Dept. App. Div. order of 1/25/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
AVIATION - FEDERAL PREEMPTION - ADEQUACY OF DEFENDANT'S
DISEMBARKING PROCEDURES AND SERVICES - WHETHER FEDERAL LAW
PREEMPTS PLAINTIFF'S COMMON-LAW NEGLIGENCE CLAIMS AGAINST AIRLINE
ARISING OUT OF PLAINTIFF'S FALL DOWN STEPS OF A CHARTERED JET -
FEDERAL AVIATION ACT OF 1958 - AIRLINE DEREGULATION ACT OF 1978;
Supreme Court, Suffolk County granted defendant's motion for
summary judgment dismissing the complaint; App. Div. affirmed.

BEDESSIE (KHEMWATTIE), PEOPLE v:

2ND Dept. App. Div. order of 11/16/10; affirmance; leave to appeal granted by Ciparick, J., 3/4/11;
CRIMES - EVIDENCE - HEARSAY EVIDENCE - ADMISSIBILITY OF STATEMENTS MADE TO A TREATING PHYSICIAN BY CHILD'S MOTHER AS TO WHAT HER SON TOLD HER TRANSPIRED WITH A DAY CARE CENTER EMPLOYEE; EXPERT TESTIMONY - FALSE CONFESSIONS - WHETHER TRIAL COURT'S EXCLUSION OF EXPERT TESTIMONY ON FALSE CONFESSIONS WAS AN ABUSE OF DISCRETION; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL - FAILURE TO OBJECT TO BOLSTERING HEARSAY FROM COMPLAINANT'S MOTHER AND FAILURE TO IMPEACH CERTAIN WITNESSES;
Supreme Court, Queens County convicted defendant, upon a jury verdict, of rape in the first degree, six counts of sexual abuse in the first degree, and endangering the welfare of a child, and imposed sentence; App. Div. affirmed.

CULVER, MATTER OF v CULVER:

3RD Dept. App. Div. order of 3/3/11; modification with dissents; sua sponte examination whether the two-justice dissent is on a question of law;
PARENT AND CHILD - VISITATION - PETITION OF INCARCERATED FATHER FOR VISITATION WITH DAUGHTER - FAMILY COURT ACT, ARTICLE 6; EXPERT WITNESSES - CONFLICTING OPINIONS;
Family Court, Saratoga County granted petitioner's application, in a proceeding pursuant to Family Court Act article 6, for visitation with the parties' child; App. Div. modified by reversing so much of the Family Court order as held respondent financially responsible for all expenses associated with visitation including, but not limited to, counseling and telephone expenses, unless she has since obtained or in the future acquires health insurance covering such counseling expenses, in which case the mother shall utilize that coverage, and affirmed the order as so modified.

PAGAN (DEBRA), PEOPLE v:

1ST Dept. App. Div. order of 12/14/10; affirmance; leave to appeal granted by Graffeo, J., 3/14/11;
CRIMES - ROBBERY - FORCIBLE TAKING OF CASH - LEGAL SUFFICIENCY OF EVIDENCE OF INTENT WHERE DEFENDANT ASSERTS THAT SHE FOUGHT WITH CAB DRIVER FOR MONEY UNDER THE MISTAKEN BELIEF THAT IT BELONGED TO HER - "NEGATIVE CLAIM OF RIGHT" CHARGE - TRIAL COURT'S ALLEGED ERROR IN CHARGING THE JURY THAT "THE LAW DOES NOT PERMIT ONE PERSON TO USE FORCE TO TAKE MONEY FROM ANOTHER PERSON, EVEN WHERE THE PERSON DOING THE TAKING HONESTLY BELIEVES HE OR SHE IS ENTITLED TO THE MONEY," AND IN DENYING DEFENDANT'S REQUEST FOR AN INSTRUCTION THAT WOULD ALLOW THE JURY TO FIND THAT DEFENDANT'S MISTAKE OF FACT AS TO THE OWNERSHIP OF THE MONEY NEGATED THE ELEMENT OF INTENT - PENAL LAW § 15.20(1)(a), § 155.15(1);

Supreme Court, New York County convicted defendant, after a jury trial, of attempted robbery in the second degree, criminal possession of a weapon in the third degree, assault in the third degree and menacing in the second degree, and sentenced her, as a second felony offender, to concurrent terms of, respectively, 3 years on the robbery count, 2 to 4 years, 1 year and 1 year; App. Div. affirmed.

PERINO (CHRISTOPHER), PEOPLE v:

1ST Dept. App. Div. order of 8/17/10; modification; leave to appeal granted by Jones, J., 3/3/11;

CRIMES - PERJURY - MATERIALITY OF PERJURED TESTIMONY BY DEFENDANT FORMER POLICE OFFICER REGARDING HIS QUESTIONING OF A SUSPECT - PENAL LAW § 210.05; INTENT - SUFFICIENCY OF EVIDENCE OF DEFENDANT'S INTENT TO COMMIT PERJURY;

Supreme Court, Bronx County convicted defendant, after a bench trial, of three counts of perjury in the first degree and one count of perjury in the third degree, and sentenced him to an aggregate term of 4 months, concurrent with 5 years' probation; App. Div. modified, on the law, to reduce the conviction of perjury in the first degree under the third and fourth counts of the indictment to perjury in the third degree, and also modified, as a matter of discretion in the interest of justice, to reduce each term of imprisonment to two months, and otherwise affirmed; and remitted to Supreme Court, Bronx County for further proceedings pursuant to CPL 460.50(5).

REZPLEX, MATTER OF v NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, et al.:

1ST Dept. App. Div. order of 9/7/10; reversal; leave to appeal granted by App. Div., 2/17/11; Rule 500.11 review pending;

MUNICIPAL CORPORATIONS - UNSAFE BUILDINGS - AGENCY'S DENIAL OF PETITIONER'S PROTEST OF CHARGES AND LIEN IMPOSED FOR EMERGENCY REPAIR OF RETAINING WALL - WHETHER THE APPELLATE DIVISION ERRED IN RULING THAT THE AGENCY'S DETERMINATION WAS ARBITRARY AND CAPRICIOUS BECAUSE THE RECORD ESTABLISHED THAT PETITIONER DID NOT OWN AND WAS NOT RESPONSIBLE FOR REPAIRING A RETAINING WALL, WHICH WAS LOCATED ON ANOTHER'S PROPERTY - SCOPE OF JUDICIAL REVIEW OF AGENCY DETERMINATION - OWNERSHIP ISSUE RAISED FOR THE FIRST TIME AT SUPREME COURT;

Supreme Court, Bronx County denied a CPLR article 78 petition challenging an agency determination denying petitioner's protest of charges and lien imposed for emergency repair of a retaining wall, and dismissed the proceeding; App. Div. reversed and granted the petition.

VISTRA TRUST COMPANY (JERSEY) LIMITED &c., et al. v STOFFEL, et al.:

1ST Dept. App. Div. order of 10/28/10; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether defendants Stoffel and Lauramca Holdings LLC are permissible appellants within the meaning of CPLR 5511;

APPEALS - APPELLATE DIVISION - DISMISSAL OF APPEAL; DEFAULT JUDGMENT;

Supreme Court, New York County awarded plaintiffs default judgment against defendants Stoffel and Lauramca Holdings, LLC in the total amount of \$36,532,160.82; App. Div. granted plaintiffs' motion to dismiss defendants' appeal and dismissed the appeal.