

COURT OF APPEALS NEW FILINGS

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

November 4 through November 10, 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.

JADE REALTY LLC v CITIGROUP COMMERCIAL MORTGAGE TRUST
2005-EMG, et al.:

Supreme Court, New York County judgment of 6/20/11, seeking review of 1ST Dept. App. Div. order of 4/26/11; reversal; leave to appeal granted by Court of Appeals, 10/25/11;
CONTRACTS - CONSTRUCTION - OBLIGATION TO PAY YIELD MAINTENANCE UNDER COMMERCIAL LOAN - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON ITS CAUSE OF ACTION FOR BREACH OF CONTRACT;
Supreme Court, New York County granted the motion by defendants Citigroup Commercial Mortgage Trust 2005-EMG, et al. for summary

judgment dismissing the complaint and denied plaintiff's cross motion for summary judgment on its first cause of action for breach of contract; App. Div. reversed, denied the motion by defendants Citigroup Commercial Mortgage Trust 2005-EMG and LaSalle Bank National Association for summary judgment dismissing the complaint, reinstated the complaint, and granted plaintiff's cross motion for summary judgment on its first cause of action for breach of contract; Supreme Court awarded damages to plaintiff on its first cause of action for breach of contract, dismissed plaintiff's second cause of action and dismissed the counterclaim by defendant LaSalle Bank National Association.

MELCHER v APOLLO MEDICAL FUND MANAGEMENT LLC et al.:

1ST Dept. App. Div. order of 5/17/11; affirmance;
leave to appeal granted by Court of Appeals, 10/25/11; Rule
500.11 review pending;

CONTRACTS - WHETHER CAUSE OF ACTION FOR CONVERSION WAS PROPERLY
DISMISSED AS DUPLICATIVE OF BREACH OF CONTRACT CAUSE OF ACTION;
CHALLENGE TO APPELLATE DIVISION'S SUA SPONTE DISMISSAL OF
PLAINTIFF'S APPEAL;

Supreme Court, New York County awarded plaintiff damages on the
third cause of action, granted him judgment on his sixth cause of
action, and dismissed defendants' counterclaim for breach of
contract; App. Div. affirmed, and dismissed appeals from three
other Supreme Court orders as subsumed in the appeal from the
judgment.