

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**April 11, 2003 through April 17, 2003**

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

**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 Court Rule 500.11 and direct any questions to the Clerk's Office.**

For April 11, 2003 through April 17, 2003 the following jurisdictional statements for appeals were filed:

BLAKE, et al. v NEIGHBORHOOD HOUS. SERVS. OF NEW YORK CITY, INC.:  
1<sup>ST</sup> Dept. App. Div. order of 1/7/03; affirmance; leave to appeal granted by Court of Appeals, 4/8/03;  
TORTS - PERSONAL INJURY - WORKER INJURED BY COLLAPSE OF EXTENSION LADDER WHERE SAFETY CATCHES MAY HAVE BEEN UNSECURED - ALLEGED FAILURE BY WORKER TO SECURE SAFETY CATCHES AS DEFENSE TO LIABILITY OF RENOVATION COMPANY UNDER LABOR LAW § 240(1); SOLE PROXIMATE CAUSE - APPLICABILITY OF COMPARATIVE NEGLIGENCE PRINCIPLES - LIABILITY AS A MATTER OF LAW;  
Supreme Court, Bronx County dismissed the complaint upon jury verdict in favor of defendant; App. Div. affirmed.

FULLAN, et al. v 142 EAST 27<sup>TH</sup> STREET ASSOCS., et al. and 27 REALTY, LLC, et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/12/01; modification; leave to appeal granted by Court of Appeals, 4/8/03;  
LANDLORD AND TENANT - RENT REGULATION - RENT STABILIZATION - CURRENT OWNER'S LIABILITY FOR FAIR MARKET RENT APPEAL (FMRA) AWARD ASSESSED AGAINST PRIOR OWNER WHERE THE CURRENT OWNER WAS NOT A PARTY TO THE FMRA BECAUSE IT TOOK TITLE TO THE BUILDING AFTER THE FMRA HAD CONCLUDED AND THE PETITION FOR ADMINISTRATIVE REVIEW WAS DENIED;

Supreme Court, New York County denied certain defendants' motion for summary judgment dismissing the complaint as against them and plaintiff's motion for summary judgment; App. Div. modified by granting summary judgment as to liability as against defendant 27 Realty, LLC for the underlying FMRA and plaintiffs' attorneys' fees in connection therewith, remanded the matter for further proceedings and affirmed as so modified; thereafter, Supreme Court entered a judgment as to defendant 27 Realty, LLC and the parties stipulated to the discontinuance of all remaining claims and cross claims.

HAMMER v THE AMERICAN KENNEL CLUB, INC., et al.:

1<sup>ST</sup> Dept. App. Div. order of 2/27/03; affirmance with dissents;  
ANIMALS - DEFENDANTS' ALLEGED VIOLATION OF AGRICULTURE AND MARKETS LAW § 353 BY PROMULGATING A STANDARD FOR BRITTANY SPANIEL SHOW DOGS THAT INVOLVES DOCKING, OR AMPUTATION, OF THE DOGS' TAIL; PLAINTIFF'S STANDING TO SEEK CIVIL REMEDIES FOR THE ALLEGED VIOLATION OF SECTION 353;

Supreme Court, New York County dismissed plaintiff's complaint pursuant to CPLR 3211(a)(3) and (7); App. Div. affirmed.

LONGWOOD CENTRAL SCHOOL DIST. v SPRINGS UNION FREE SCHOOL DIST.:

2<sup>ND</sup> Dept. App. Div. order of 12/16/02; reversal; leave to appeal granted by Court of Appeals, 4/1/03;

SCHOOLS - TUITION REIMBURSEMENT - MEANING OF THE TERM "RESIDED" FOR PURPOSES OF EDUCATION LAW § 3202(4)(a);

Supreme Court, Suffolk County denied those branches of defendant's motions which were for summary judgment dismissing the complaint and granted plaintiff's cross motions for summary judgment; App. Div. reversed, granted those branches of defendant's motions which were for summary judgment, denied plaintiff's cross motions for summary judgment and dismissed the complaint.

METLIFE AUTO AND HOME, &c. v JOE BASIL CHEVROLET, INC., et al.:

4<sup>TH</sup> Dept. App. Div. order of 12/30/02; affirmance; leave to appeal granted by Court of Appeals, 4/1/03;  
TORTS - NEGLIGENCE - "THIRD-PARTY SPOILIATION" - EXISTENCE OF CAUSE OF ACTION FOR NEGLIGENT SPOILIATION OF EVIDENCE AGAINST AN ENTITY THAT ASSUMED A DUTY TO PRESERVE EVIDENCE FOR AN UNDERLYING ACTION; EVIDENCE - NECESSITY FOR DISCOVERY TO DETERMINE WHETHER SPOILIATION WAS INTENTIONAL AND WILLFUL RATHER THAN NEGLIGENT;  
Supreme Court, Erie County granted defendant Royal Insurance Company's motion to dismiss the complaint against it; App. Div. affirmed.

N.Y.A.A.D., INC., d/b/a AUTOMOTIVE RECYCLERS' ASSOC. OF NEW YORK, et al. v STATE OF NEW YORK, et al.:

3<sup>RD</sup> Dept. App. Div. order of 10/24/02; reversal; leave to appeal granted by Court of Appeals, 4/8/03;  
CONSUMER PROTECTION - VALIDITY OF COMMISSIONER OF MOTOR VEHICLES' DIRECTIVE REGARDING THE 1996 AIRBAG SAFETY AND ANTI-THEFT ACT PROVISIONS CONCERNING DEPLOYED OR STOLEN AIRBAGS; SEPARATION OF POWERS - COMMISSIONER'S ALLEGED USURPATION OF LEGISLATIVE POWER;  
Supreme Court, Albany County granted plaintiffs' cross motion for summary judgment; App. Div. reversed, denied plaintiffs' cross motion, granted defendants' motion for summary judgment and dismissed the complaint.