

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**June 20, 2003 through June 26, 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 June 20, 2003 through June 26, 2003 the following jurisdictional statements for appeals were filed:

ASPRO MECHANICAL CONTRACTING, INC., et al. v. FLEET BANK, N.A.:  
2<sup>ND</sup> Dept. App. Div. order of 5/20/02; affirmance; leave to appeal granted by Court of Appeals, 6/12/03;

LIENS - LIEN LAW ARTICLE 3-A - DIVERSION OF TRUST ASSETS - PRIORITY DISPUTE BETWEEN LENDING INSTITUTION AND SUBCONTRACTORS - DEFENDANT'S NEED TO FILE A NOTICE OF LENDING UNDER LIEN LAW ARTICLE 3-A WHEN IT PREVIOUSLY FILED A BUILDING LOAN AGREEMENT AND RECORDED THE BUILDING LOAN MORTGAGES UNDER LIEN LAW ARTICLE 2; CHALLENGE TO APPELLATE DIVISION'S CONSTRUCTION OF LIEN LAW ARTICLE 3-A;

Supreme Court, Kings County granted plaintiffs' motion for summary judgment on the issue of liability and denied defendant's cross motion for summary judgment dismissing the complaint; App. Div. affirmed.

ALIJAH C. (ANONYMOUS), MATTER OF:

3<sup>RD</sup> Dept. App. Div. order of 2/27/03; affirmance; leave to appeal granted by Court of Appeals, 6/12/03;

PARENT AND CHILD - ABUSED OR NEGLECTED CHILDREN - ABUSE OF DECEASED SIBLING AS NEGLECT OF LIVING CHILDREN; SUBJECT MATTER JURISDICTION - DECEASED CHILD AS OBJECT OF FAMILY COURT ACT ARTICLE 10 PETITION;

Family Court, Chemung County dismissed petition in child abuse proceeding pursuant to Family Court Act article 10 as to respondent's deceased child; App. Div. affirmed.

CHAMBERS, et al. v. OLD STONE HILL ROAD ASSOCIATES, et al.:

2<sup>ND</sup> Dept. App. Div. order of 3/17/03; affirmance; leave to appeal granted by Court of Appeals, 6/12/03;

REAL PROPERTY - RESTRICTIVE COVENANTS - CONSTRUCTION OF CELL PHONE TOWER IN VIOLATION OF RESTRICTIVE COVENANT IN DEED - MANDATORY INJUNCTION TO REMOVE WIRELESS TELECOMMUNICATIONS SERVICE FACILITY - APPLICABILITY OF FEDERAL TELECOMMUNICATIONS ACT OF 1996 (47 USC § 151, et seq.) - REAL PROPERTY ACTIONS AND PROCEEDINGS LAW § 1951;

Supreme Court, Westchester County, inter alia, granted plaintiffs' motion for summary judgment on the first and second causes of action, permanently enjoined defendants from violating the restrictive covenants and directed defendants to remove a wireless telecommunications service facility from the encumbered property; App. Div. affirmed.

ESPOSITO v. NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, et al.:

1<sup>ST</sup> Dept. App. Div. order of 5/1/03; affirmance with dissents; Rule 500.4 review pending;

LABOR - SAFE PLACE TO WORK - "REPAIR OR ALTERATION OF BUILDING OR STRUCTURE" (LABOR LAW § 240[1]); "CONSTRUCTION WORK" WITHIN THE MEANING OF LABOR LAW § 241(6); PLAINTIFF AS A SPECIAL EMPLOYEE OF DEFENDANT BUILDING LESSEE; SUMMARY JUDGMENT;

Supreme Court, New York County, in two orders, dismissed the complaint and all cross claims as to the defendant building owner and City Economic Dev. Corp., and dismissed plaintiff's Labor Law §§ 240(1), 241(6) and 200 claims against the building lessee and its parent corporation; App. Div. affirmed.

GALINDO &c. v. TOWN OF CLARKSTOWN and CLARK:

2<sup>ND</sup> Dept. App. Div. order of 5/19/03; affirmance with dissents; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution; NEGLIGENCE - DUTY - PREMISES LIABILITY - DUTY OF HOMEOWNER TO WARN A PERSON PARKED IN HOMEOWNER'S DRIVEWAY OF A DANGEROUS CONDITION CREATED BY A LEANING 80-FOOT TREE LOCATED ON NEIGHBOR'S PROPERTY;  
Supreme Court, Rockland County granted that branch of defendant homeowner's motion for summary judgment dismissing the complaint as against him; App. Div. affirmed.

LEGION OF CHRIST, INCORPORATED, MATTER OF, v. TOWN OF MOUNT PLEASANT &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 3/10/03; affirmance; leave to appeal granted by Court of Appeals, 6/10/03;  
TAXATION - REAL PROPERTY TAX LAW (RPTL) ARTICLE 7 PROCEEDING - PETITIONER'S ENTITLEMENT TO A TAX EXEMPTION FOR SHOWING "GOOD FAITH" PLAN TO USE ITS LAND PRINCIPALLY AS A CHURCH OR OTHER PLACE OF WORSHIP; SPECIAL PERMIT FOR USING LAND AS A RELIGIOUS, CHARITABLE OR ELEEMOSYNARY INSTITUTION NECESSARY FOR A TAX EXEMPTION (RPTL § 420-a[3][a]);  
Supreme Court, Westchester County denied petitioner's motion for partial summary judgment declaring that the subject property is tax exempt and granted that branch of respondent Town's cross motion for summary judgment declaring that petitioner's proposed use of the property was illegal without a special permit and, therefore, taxable; App. Div. affirmed.

NEW YORK TELEPHONE COMPANY v. NASSAU COUNTY, et al. (and two other proceedings):

2<sup>ND</sup> Dept. App. Div. order of 9/16/03; modification; leave to appeal granted by Court of Appeals, 6/12/03;  
TAXATION - REAL PROPERTY TAX - AD VALOREM LEVIES IN NON-COUNTYWIDE SPECIAL DISTRICTS - METHOD OF ASSESSING REAL PROPERTY TAXES; REAL PROPERTY TAX LAW ARTICLE 18; DENIAL OF RETROACTIVE REFUND TO TAXPAYER UPON DETERMINATION OF INVALIDITY OF ASSESSMENTS;  
Supreme Court, Nassau County declared the County's methods of assessing real property in non-countywide special districts invalid, enjoined the County from so assessing real property, and referred the issue of damages to trial; App. Div. modified by granting defendants' cross motion for summary judgment dismissing the complaint in one action and granting respondents' motion to dismiss the two proceedings to the extent of precluding payment of tax refunds.

SLAVIN (CHRISTOPHER), PEOPLE v.:

2<sup>ND</sup> Dept. App. Div. order of 11/18/02; affirmance; leave to appeal granted by Kaye, Ch.J., 6/11/03;

CRIMINAL LAW AND PROCEDURE - EVIDENCE - PHOTOGRAPHS OF DEFENDANT'S ALLEGEDLY RACIST TATTOOS - DISCOVERY AND ADMISSIBILITY OF DEFENDANT'S TATTOOS (CPL 240.40); EXPERT TESTIMONY ON THE MEANING OF TATTOOS; ALLEGED PROSECUTORIAL MISCONDUCT;

Suffolk County Court convicted defendant of attempted murder in the second degree, assault in the first degree, assault in the second degree and aggravated harassment in the second degree; App. Div. affirmed.

ZEIDES &c. v. THE HEBREW HOME FOR THE AGED AT RIVERDALE, INC. &c., et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/24/02; modification; leave to appeal granted by App. Div., 6/3/03; Rule 500.4 review pending; HEALTH - NURSING HOMES - ALLEGATIONS OF COMPLAINT AS STATING A CAUSE OF ACTION UNDER PUBLIC HEALTH LAW § 2801-d; LIMITATIONS - BURDEN OF PROVING TIMELINESS ON A MOTION TO DISMISS; STATUTE OF LIMITATIONS APPLICABLE TO A CAUSE OF ACTION UNDER PUBLIC HEALTH LAW § 2801-d; STATUTE OF LIMITATIONS APPLICABLE TO PLAINTIFF'S CLAIM OF IMPROPER CARE BY NURSING HOME STAFF;

Supreme Court, Bronx County denied the motion of defendant The Hebrew Home for the Aged at Riverdale, Inc. for summary judgment dismissing the complaint as time-barred; App. Div. modified to the extent of granting defendant leave to renew its motion after further discovery, without prejudice to plaintiff's motion to amend the complaint.

