

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
July 4, 2003 through July 10, 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 July 4, 2003 through July 10, 2003 the following jurisdictional statements for appeals were filed:

AARONS (LENWORTH), PEOPLE v:

1ST Dept. App. Div. order of 4/24/03; reversal; leave to appeal granted by Ellerin, J., 6/26/03;
CRIMES AND CRIMINAL PROCEDURE - GRAND JURY - CONDUCT OF PROCEEDINGS - EFFECT OF PROSECUTOR'S INSTRUCTIONS TO GRAND JURY TO CEASE ITS DELIBERATIONS SO THAT PROSECUTOR COULD PRESENT ADDITIONAL WITNESS AFTER GRAND JURY INDICATED IT WAS UNABLE TO REACH A DECISION; APPEALABILITY OF SUPREME COURT ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AN INDICTMENT WHERE PROSECUTOR STOPPED GRAND JURY DELIBERATIONS, PRESENTED ADDITIONAL WITNESS AND RESUBMITTED CHARGES WITHOUT PRIOR COURT APPROVAL;
Supreme Court, Bronx County granted defendant's motion to dismiss an indictment charging him with burglary in the first degree, attempted robbery in the first degree and other crimes; App. Div. reversed and reinstated the indictment.

BART v MILLER:

2ND Dept. App. Div. orders of 2/3/03 and 5/12/03; affirmance, dismissal and denial of motion for reargument; sua sponte examination whether the orders appealed from finally determine the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

ARBITRATION - CONFIRMING OR VACATING AWARD - CLAIM THAT ENFORCEMENT OF ARBITRATION AWARD VIOLATES PUBLIC POLICY; CLAIM THAT ARBITRATION AWARD WAS MADE IN MANIFEST DISREGARD OF THE LAW; CPLR 7510 and 7511;

Supreme Court, Nassau County entered judgment on an order granting petitioner's motion to confirm an arbitration award; App. Div. affirmed the judgment, dismissed the appeal from the order and, in a separate order, denied respondent's motion for reargument.

BLAKE, PEOPLE ex rel, v PHILLIPS:

2ND Dept. App. Div. order of 6/5/03; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - AVAILABILITY OF RELIEF - ALLEGEDLY PERJURED TESTIMONY OF WITNESS TO DEFENDANT'S JAILHOUSE CONFESSION - DUTY OF PROSECUTOR TO NOTIFY COURT OF PERJURED TESTIMONY SUPPORTING CONVICTION;

Appellate Division, Second Department denied petitioner's application for a writ of habeas corpus and dismissed the petition.

IRELAND, MATTER OF, (an attorney):

3RD Dept. App. Div. order of 6/6/03; suspension; sua sponte examination whether a jurisdictional predicate lies to support an appeal as of right;

ATTORNEYS - DISCIPLINARY PROCEEDINGS - SUSPENSION FROM PRACTICE OF LAW - PRIOR JUDICIAL IMPOSITION OF SANCTIONS AGAINST ATTORNEY FOR ASSERTION OF CLEARLY UNMERITORIOUS CLAIMS - CLAIM THAT SUSPENSION FOR SAME CONDUCT VIOLATES CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY (NEW YORK STATE CONSTITUTION ARTICLE 6 § 3 and ARTICLE 1 § 6) - JUDICIARY LAW § 90;

Appellate Division, Third Department found respondent guilty of professional misconduct, suspended respondent from practice for six months and ordered respondent to refrain from the practice of law in any form and to comply with that court's rules regulating conduct of suspended attorneys.

MASON, et al., MATTER OF, v THE DEPARTMENT OF BUILDINGS OF THE CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 5/22/03; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - ZONING - NONCONFORMING USE - CHALLENGE TO ADMINISTRATIVE DETERMINATION THAT TENANT'S USE OF RESIDENTIAL APARTMENT AS RECORDING STUDIO WAS NOT "HOME OCCUPATION" USE WITHIN THE MEANING OF NEW YORK CITY ZONING RESOLUTION § 12-10; MULTIPLE DWELLING LAW § 276;
Appellate Division, First Department entered judgment confirming respondent Environmental Control Board's determination that petitioner used the premises in violation of applicable zoning regulations, denied the petition and dismissed the CPLR article 78 proceeding.

MINASSIAN v TEMARES, et al.:

2ND Dept. App. Div. order of 4/21/03; modification, dismissal of appeals and denial of motion for reargument or leave to appeal; sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
DEEDS - CONSTRUCTION - CHALLENGE TO RULING THAT DEED PROVISION GRANTED ALL SUBSEQUENT OWNERS OF PROPERTY ABUTTING A ROADWAY OWNERSHIP OF THAT PORTION OF THE ROADWAY ABUTTING THEIR PROPERTY TO THE CENTERLINE, WHICH ENCOMPASSED USE FOR ALL PURPOSES, INCLUDING PARKING, SUBJECT ONLY TO THE RIGHT OF OTHER OWNERS TO USE THE SAME FOR INGRESS AND EGRESS;
Supreme Court, Nassau County entered an order granting defendants' cross motion for summary judgment dismissing the complaint, a judgment dismissing the complaint and an order and resettled judgment (one paper) dismissing the complaint and declaring the rights of the parties to the subject private roadway; App. Div. dismissed appeals from the order and judgment and modified the order and resettled judgment by deleting the provision thereof which declared that plaintiff "has no right to park, or to permit cars to park, in or along the private road" and substituting therefor a provision declaring that the plaintiff has the right to use the private roadway for parking insofar as it does not interfere with the other parties' rights of ingress and egress and affirmed the order and resettled judgment as so modified.

