

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
September 26, 2003 through October 2, 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 September 26, 2003 through October 2, 2003 the following jurisdictional statements for appeals were filed:

BELMONTE, MATTER OF, v SNASHALL, et al.:

3RD Dept. App. Div. order of 4/17/03; affirmance; leave to appeal granted by Court of Appeals, 9/23/03;

WORKERS' COMPENSATION - STATUS OF PHYSICIANS CONDUCTING INDEPENDENT MEDICAL EXAMINATIONS OF CLAIMANTS - MEANING OF "BOARD CERTIFIED" IN WORKERS' COMPENSATION LAW § 137(3) - CONVERSION OF ARTICLE 78 PROCEEDINGS TO SINGLE DECLARATORY JUDGMENT ACTION; Supreme Court, Albany County partially converted six article 78 proceedings into an action for declaratory judgment, declared respondents' interpretation of Workers' Compensation Law § 137 invalid, invalidated the challenged Workers' Compensation regulations to the extent the regulations required physicians to be certified by the American Board of Medical Specialties or American Osteopathic Association, annulled respondents' denials of authorization to petitioners to perform independent medical

examinations and remanded the matters to the Workers' Compensation Board for further consideration of petitioners' applications; App. Div. affirmed.

BOWER ASSOCIATES v TOWN OF PLEASANT VALLEY, et al.:

2ND Dept. App. Div. order of 5/12/03; reversal; leave to appeal granted by Court of Appeals, 9/18/03;

MUNICIPAL CORPORATIONS - WHETHER DEVELOPER HAD PROTECTED PROPERTY INTEREST IN SUBDIVISION APPROVAL WHERE COURTS PREVIOUSLY ANNULLED SUBDIVISION DENIAL AS ARBITRARY AND CAPRICIOUS AND CONCLUDED THAT DEVELOPER SATISFIED ALL CONDITIONS FOR SUBDIVISION APPROVAL; Supreme Court, Dutchess County denied defendants' motion to dismiss the complaint for failure to state a cause of action; App. Div. reversed, granted defendants' motion, and dismissed the complaint.

CONSILVIO, MATTER OF, v MICHAEL B. (ANONYMOUS):

1ST Dept. App. Div. order of 8/21/03; reversal; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

MENTAL HEALTH - PROCEEDING SEEKING AN ORDER AUTHORIZING RETENTION OF PERSON AS AN INVOLUNTARY PATIENT IN A PSYCHIATRIC HOSPITAL (MENTAL HYGIENE LAW § 9.33) - COURT'S AUTHORITY IN RETENTION PROCEEDING TO DIRECT TRANSFER OF PATIENT FROM A SECURE TO A NON-SECURE PSYCHIATRIC FACILITY; BURDEN OF PROOF TO SUPPORT SECURE DETENTION;

Supreme Court, New York County directed petitioner hospital director to transfer respondent from a secure facility to a non-secure facility; App. Div. reversed and vacated the transfer direction.

550 HALSTEAD CORP. v THE ZONING BOARD OF APPEALS OF THE TOWN/VILLAGE OF HARRISON:

2ND Dept. App. Div. order of 7/14/03; reversal with dissents; Rule 500.4 review pending;

MUNICIPAL CORPORATIONS - ZONING - NONCONFORMING USE - WHETHER REPLACEMENT OF GROUND-LEVEL PALLET LUMBER STORAGE WITH OUTDOOR METAL STORAGE RACKS IN A NONCONFORMING LUMBERYARD CONSTITUTES AN ILLEGAL EXPANSION OF NONCONFORMING USE;

Supreme Court, Westchester County granted the CPLR article 78 petition, annulled the determination of the Zoning Board of Appeals (ZBA) denying petitioner's application for a determination that its newly-installed storage racks did not constitute an improper expansion of its nonconforming use, or for a variance, and directed the ZBA to grant the petitioner's application; App. Div. reversed, denied the petition and confirmed the determination of the ZBA.

HANFORD v PLAZA PACKAGING CORP., et al. and LANDOWNE:

1ST Dept. App. Div. order of 5/20/03; affirmance with dissents; leave to appeal granted by Appellate Division, 9/16/03; TORT - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; WORKERS' COMPENSATION - EXCLUSIVENESS OF REMEDY (WORKERS' COMPENSATION LAW § 29[6]) - RES JUDICATA - WHETHER A WORKERS' COMPENSATION BOARD DETERMINATION THAT PLAINTIFF'S INJURY WAS ACCIDENTAL BARS PLAINTIFF FROM BRINGING AN INTENTIONAL TORT CLAIM AGAINST THE FELLOW EMPLOYEE WHO CAUSED THE INJURY; Supreme Court, Bronx County granted defendant Landowne's motion for summary judgment dismissing the complaint as against him; App. Div. affirmed.

HEADRIVER, LLC, MATTER OF, v TOWN BOARD OF THE TOWN OF RIVERHEAD:

2ND Dept. App. Div. order of 7/21/03; affirmance, leave to appeal granted by Appellate Division, 9/22/03; MUNICIPAL CORPORATIONS - ZONING - SPECIAL USE PERMIT - WHETHER DENIAL OF SPECIAL USE PERMIT, RESULTING FROM THE OPERATION OF THE SUPER-MAJORITY PROVISION OF GENERAL MUNICIPAL LAW § 239-M, CAN BE CHALLENGED AS ARBITRARY AND CAPRICIOUS; PARTIES - NECESSARY PARTIES - WHETHER COUNTY PLANNING COMMISSION IS NECESSARY PARTY TO CPLR ARTICLE 78 PROCEEDING CHALLENGING DENIAL OF SPECIAL USE PERMIT WHERE TOWN BOARD VOTE TO APPROVE PERMIT APPLICATION IS NOT SUPPORTED BY A SUPER-MAJORITY VOTE; REVIEWABILITY OF COUNTY PLANNING COMMISSION'S RECOMMENDATION IN A CPLR ARTICLE 78 PROCEEDING; Supreme Court, Suffolk County denied respondent Town's motion to dismiss CPLR article 78 petition seeking review of Town Board determination that, in effect, denied petitioner's application for a special use permit; App. Div. affirmed.

HOME DEPOT, U.S.A., INC. v DUNN &c., et al.:

2ND Dept. App. Div. order of 5/12/03; reversal; leave to appeal granted by Court of Appeals, 9/18/03; MUNICIPAL CORPORATIONS - SUBSTANTIVE DUE PROCESS - MUNICIPALITY'S DENIAL OF PERMIT FOR ROAD WIDENING PROJECT NECESSARY FOR RETAIL DEVELOPMENT - ACTION PURSUANT TO 42 U.S.C. § 1983 FOR PURPORTED VIOLATION OF PLAINTIFF'S EQUAL PROTECTION AND DUE PROCESS RIGHTS - WHETHER PLAINTIFF HAS PROPERTY RIGHT IN PERMIT WHERE PLAINTIFF APPARENTLY SATISFIED ALL CONDITIONS FOR PERMIT APPROVAL; QUALIFIED IMMUNITY; Supreme Court, Westchester County denied defendants' motion for summary judgment dismissing the complaint and granted in part and denied in part plaintiff's motion for summary judgment as to liability; App. Div., among other things, reversed, on the law, granted defendants' cross motion for summary judgment dismissing the complaint, denied the branches of plaintiff's motion which sought summary judgment on the issue of liability on the causes of action alleging violations of plaintiff's substantive due process rights, and dismissed the complaint.

HYMAN, et al. v QUEENS COUNTY BANCORP, INC.:

2ND Dept. App. Div. order of 8/18/03; affirmance with dissents;
Rule 500.4 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - WHETHER ISSUANCE OF
CERTIFICATE OF OCCUPANCY PRECLUDES A FINDING OF NEGLIGENCE BASED
UPON ALLEGED BUILDING CODE VIOLATIONS; APPLICABILITY TO BANK OF
BUILDING CODE PROVISIONS IN WHICH PLAINTIFF SLIPPED AND FELL DOWN
A STAIRWAY; PROXIMATE CAUSE;

Supreme Court, Queens County granted defendant's motion for
summary judgment dismissing the complaint; App. Div. affirmed.

RJC REALTY HOLDING CORP. v REPUBLIC FRANKLIN INSURANCE CO., et al.:

2ND Dept. App. Div. order of 3/17/03; reversal; leave to appeal
granted by Court of Appeals, 9/18/03;

INSURANCE - DUTY TO DEFEND AND INDEMNIFY - NEGLIGENT HIRING AND
SUPERVISION CLAIMS AGAINST EMPLOYER FOR EMPLOYEE'S ALLEGED ACT OF
IMPROPER SEXUAL CONTACT; DISCLAIMER OF COVERAGE - REASONABLENESS
OF INSURER'S DELAY IN DISCLAIMING;

Supreme Court, Nassau County granted plaintiff's motion for
summary judgment, denied defendant insurers' cross motion for
summary judgment and declared defendant insurers obligated to
defend and indemnify plaintiff in an underlying action; App. Div.
reversed, on the law, denied plaintiff's motion, granted
defendants' cross motion, and declared that defendant insurers
were not obligated to defend and indemnify plaintiff.

SOUNESS v RANDALL:

3RD Dept. App. Div. order of 7/1/03; sua sponte examination of
whether a jurisdictional predicate exists for an appeal as of
right;

ATTORNEY AND CLIENT - ASSIGNMENT OF COUNSEL - APPELLATE DIVISION
DENIAL OF MOTION FOR ASSIGNMENT OF COUNSEL;

Appellate Division denied appellant's motion for assignment of
counsel.

WILLIAMS, PEOPLE EX REL., v DONNELLY:

4TH Dept. App. Div. orders of 6/9/03 and 6/30/03; sua sponte
examination of 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;

PRISONS AND PRISONERS - HABEAS CORPUS - CHALLENGE TO APPELLATE
DIVISION ORDER DENYING MOTION TO REARGUE ORDER DENYING PETITION
FOR A WRIT OF HABEAS CORPUS;

Appellate Division denied petition for writ of habeas and denied
motion for reargument.