

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
November 28, 2003 through December 4, 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 November 28, 2003 through December 4, 2003 the following jurisdictional statements for appeals were filed:

AMO v LITTLE RAPIDS CORPORATION, et al.:

3RD Dept. App. Div. order of 1/13/00; reversal with dissents; motion to dismiss appeal pending;
TORTS - PERSONAL INJURY - FALL FROM ELEVATED WORK SITE (LABOR LAW § 240[1]); DIRECTED VERDICT; INDEMNIFICATION;
Supreme Court, St. Lawrence County judgment awarded Little Rapids Corporation \$42,500 in attorneys' fees and costs against MRL Constructors of New York, Ltd. and awarded LaFramboise Group \$42,500 in attorneys' fees and costs against MRL; App. Div. reversed and remitted to Supreme Court for a new trial; thereafter, upon the parties' stipulation, Supreme Court entered judgment awarding Little Rapids \$42,500 in attorneys' fees and costs against MRL and awarding LaFramboise \$28,000 in attorneys' fees and costs against MRL.

BARKLEE REALTY COMPANY, LLC v PATAKI:

1ST Dept. App. Div. order of 10/16/03; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether attorney is "pro se" appellants' authorized legal representative; CORPORATIONS - LIMITED LIABILITY COMPANIES - WHETHER LIMITED LIABILITY COMPANY LAW § 206 VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHTS TO DUE PROCESS (US CONST 5TH, 14TH AMENDS; NY CONST, ART I, § 6), EQUAL PROTECTION (US CONST 14TH AMEND; NY CONST, ART I, § 11) AND ACCESS TO THE COURTS (NY CONST, ART X, § 4); Supreme Court, New York County granted plaintiffs' motion for summary judgment, denied defendant's cross motion for summary judgment, declared that Limited Liability Company Law § 206 violates plaintiffs' constitutional rights to due process, equal protection and access to the courts and enjoined its enforcement; App. Div. reversed, denied plaintiffs' motion for summary judgment, granted defendant's cross motion for summary judgment and declared Limited Liability Company Law § 206 constitutional.

BOTA v MUNICIPAL SERVICE COMMISSION OF THE CITY OF NEW ROCHELLE and THE CITY OF NEW ROCHELLE:

2ND Dept. App. Div. order of 10/27/03; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; CIVIL SERVICE - APPOINTMENT AND PROMOTION - WHETHER COLLEGE CREDIT REQUIREMENTS IN NEW ROCHELLE CIVIL SERVICE RULE XIII VIOLATE THE "MERIT AND FITNESS" CLAUSE OF THE NEW YORK STATE CONSTITUTION (NY CONST, ART V, § 6) AS APPLIED TO POLICE OFFICERS HIRED PRIOR TO THE RULE'S ENACTMENT; Supreme Court, Westchester County denied defendants' motion for summary judgment, granted plaintiffs' cross motion for summary judgment, declared New Rochelle Civil Service Rule XIII unconstitutional and permanently enjoined defendants from enforcing that Rule as it applies to plaintiffs and other officers hired prior to its enactment; App. Div. reversed, granted defendants' motion for summary judgment, denied plaintiffs' cross motion for summary judgment and declared Rule XIII constitutional as applied to police officers hired prior to its enactment.

BRILL, et al. v CITY OF NEW YORK, et al.:

2ND Dept. App. Div. order of 5/19/03; affirmance; leave to appeal granted by Court of Appeals, 11/20/03; JUDGMENTS - SUMMARY JUDGMENT - TIMELINES OF MOTION (CPLR 3212[a]) - MOTION MADE ALMOST ONE YEAR AFTER FILING OF NOTE OF ISSUE; Supreme Court, Kings County granted defendant City of New York's motion for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

LOUIS DREYFUS ENERGY CORP., et al. v MG REFINING and
MARKETING, INC., et al.:

1ST Dept. App. Div. order of 4/3/03; affirmance; leave to appeal granted by Court of Appeals, 11/24/03;
SURETYSHIP AND GUARANTEE - INTERPRETATION OF GUARANTEE - WHETHER GUARANTOR MAY BE LIABLE UNDER CONTINUING GUARANTEE WHERE UNDERLYING CONTRACT WAS ENTERED INTO BEFORE GUARANTEE'S EXPIRATION DATE BUT CONTRACT DAMAGES ACCRUED AFTER EXPIRATION DATE;
Supreme Court, New York County granted defendant MG Holdings North America, Inc.'s motion for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

MCCORMICK v THE CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 7/31/03; affirmance; leave to appeal granted by Court of Appeals, 11/20/03;
MUNICIPAL CORPORATIONS - TORT LIABILITY - POLICE - GENERAL MUNICIPAL LAW (GML) § 205-e - WHETHER PLAINTIFF'S ALLEGATION THAT CIVIL DEFENDANTS VIOLATED THE PENAL LAW AND CRIMINAL PROCEDURE LAW MAY SERVE AS A PREDICATE FOR A WRONGFUL DEATH CLAIM UNDER GML § 205-e;
Supreme Court, New York County granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

NIEVES, MATTER OF, v GIRIMONTE:

2ND Dept. App. Div. order of 10/6/03; reversal with dissents; sua sponte examination whether the two-Justice dissent is on an issue of law;
MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - CHALLENGE TO APPELLATE DIVISION DECISION REVERSING GRANT OF GENERAL MUNICIPAL LAW § 50-e(5) APPLICATION FOR LEAVE TO SERVE A LATE NOTICE OF CLAIM;
Supreme Court, Suffolk County granted petitioners' General Municipal Law § 50-e(5) application for leave to serve a late notice of claim; App. Div. reversed, "on the facts and as a matter of discretion" and denied petitioners' application.

TORNHEIM v TORNHEIM:

2ND Dept. App. Div. order of 10/27/03; affirmance and dismissal; sua sponte examination whether the order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
REFERENCES - SCOPE OF REFERENCE TO JUDICIAL HEARING OFFICER;
CHALLENGE TO GRANT OF MOTION TO VACATE JUDGMENT OF CONFESSION ON GROUND THAT JUDICIAL HEARING OFFICER USURPED JUDICIAL POWERS RESERVED TO SUPREME COURT JUSTICES;
Supreme Court, Kings County granted defendant's motion to vacate a judgment by confession entered in favor of nonparty attorney for plaintiff against the plaintiff in the sum of \$75,000 and vacated the judgment by confession; App. Div. dismissed the appeal by the plaintiff and otherwise affirmed.