

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
June 21, 2002 through June 27, 2002

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 21, 2002 through June 27, 2002 the following jurisdictional statements for appeals were filed:

BARNEY (EARL), PEOPLE v:

4TH Dept. App. Div. order of 5/3/02; affirmance with dissents; leave to appeal granted by Hurlbutt, J., 6/17/02;
CRIMES AND CRIMINAL PROCEDURE - BURGLARY SECOND DEGREE;
SUFFICIENCY OF EVIDENCE THAT BUILDING WAS A DWELLING - RECENT DEATH OF OCCUPANT; TRIAL COURT FAILURE TO SUBMIT LESSER INCLUDED OFFENSE OF BURGLARY SECOND DEGREE TO JURY; REFUSAL OF DEFENDANT'S WAIVER OF RIGHT TO BE PRESENT DURING VOIR DIRE OF JURORS;
Supreme Court, Monroe County, convictions of burglary second degree and attempted petit larceny; App. Div. affirmed; dissenters would reduce the conviction of burglary in the second degree to burglary in the third degree, vacate the sentence and remit for further proceedings.

BINGHAM v NEW YORK CITY TRANSIT AUTHORITY AND METROPOLITAN
TRANSPORTATION AUTHORITY:

1ST Dept. App. Div. order of 10/30/01; affirmance; leave to
appeal granted by Court of Appeals, 6/13/02;

TORT - PERSONAL INJURY; SUMMARY JUDGMENT - OWNERSHIP AND CONTROL
OF STAIRWAY; DUTY; ESTOPPEL;

Supreme Court, New York County, inter alia, granted defendant New
York City Transit Authority's motion for summary judgment
dismissing the complaint; App. Div. affirmed.

GRAY &c. v CREW, CHANCELLOR &c., et al.:

1ST Dept. App. Div. order of 4/18/02; affirmance; sua sponte
examination of whether a substantial constitutional question is
directly involved;

CIVIL SERVICE; COLLECTIVE BARGAINING - TEACHER GRIEVANCES; HUMAN
RIGHTS - ALLEGED EMPLOYMENT DISCRIMINATION; TORT - DEFAMATION;
ALLEGED ABRIDGMENT OF FIRST AMENDMENT RIGHTS; NOTICE OF CLAIM
REQUIREMENT; EXHAUSTION OF REMEDIES;

Supreme Court, Bronx County, granted defendants' motion for
summary judgment dismissing the complaint; App. Div. affirmed.

GROSSMAN, et al. v SALL, et al.:

1ST Dept. App. Div. order of 11/6/97; affirmance; sua sponte
examination of whether a substantial constitutional question is
directly involved to support an appeal taken as of right pursuant
to CPLR 5601(d);

DECEDENT'S ESTATE - ALLEGED BREACH OF FIDUCIARY OBLIGATION;
ASSERTED RIGHT TO JURY TRIAL;

Supreme Court, New York County, inter alia, granted defendants'
motion to transfer the Supreme Court action to Surrogate's Court
and Surrogate's Court granted defendants' motion to vacate
plaintiffs' jury demand; App. Div. affirmed.

MORAN TOWING CORPORATION, MATTER OF, and EKLOF MARINE CORPORATION
v URBACH, COMMISSIONER:

3RD Dept. App. Div. order of 6/7/01; reversal; sua sponte
examination 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 taken as of right pursuant to CPLR 5601(d);
TAXATION; VALIDITY OF NEW YORK PETROLEUM BUSINESS TAX - UNDUE
BURDEN ON INTERSTATE COMMERCE ALLEGED (TAX LAW § 301[a][1][ii];
§ 301-a(b)(2) AND (c)(1)(b));

Supreme Court, Albany County, granted respondent's motion and
dismissed the petition for failure to exhaust administrative
remedies; App. Div. reversed, denied the motion and declared the
challenged tax unconstitutional, Supreme Court subsequently
entered judgment.

ROMERO v THE STATE OF NEW YORK:

3rd Dept. App. Div. order of 5/16/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved;

TORT - MALICIOUS PROSECUTION, UNJUST CONVICTION, UNJUST IMPRISONMENT, FALSE ARREST; DISMISSAL OF CLAIM BASED UPON FAILURE TO ESTABLISH PRIMA FACIE CASE;

Court of Claims entered judgment in favor of the State; App. Div. affirmed.

SANCHEZ (PEDRO), PEOPLE v:

2ND Dept. App. Div. order of 10/29/01; affirmance; leave to appeal granted by Wesley, J., 6/14/02;

CRIMINAL PROCEDURE - TRIALS; JURIES AND JUROR QUALIFICATION - INABILITY TO UNDERSTAND OR COMMUNICATE IN ENGLISH (CPLR 270.35[1]); WAIVER OF CHALLENGE TO JUROR - DEFENDANT'S FAILURE TO EXHAUST PEREMPTORY CHALLENGES; JUROR DISQUALIFICATION (JUDICIARY LAW § 510[4]);

Supreme Court, Queens County, conviction of criminal sale of a controlled substance in the first degree, criminal possession of a controlled substance in the first degree, criminal possession of a controlled substance in the second degree and criminal possession of a controlled substance in the third degree; App. Div. affirmed.

SILBER v SILBER, et al. and SILBER, et al.:

1st Dept. App. Div. order of 2/26/02; reversal; leave to appeal granted by Court of Appeals, 6/13/02;

RETIREMENT AND PENSIONS - RENUNCIATION OF BENEFICIARY STATUS; WAIVER PROVISIONS OF QUALIFIED DOMESTIC RELATIONS ORDER EXECUTED BY EX-SPOUSE IN RETURN FOR A LUMP SUM PAYMENT AS EFFECTIVE RENUNCIATION;

Supreme Court, New York County, inter alia, granted defendant Barbara A. Silber's motion for summary judgment, declared she is entitled to the disputed pension benefits and dismissed the complaint; App. Div. reversed and inter alia denied defendant's motion, granted plaintiff's cross-motion for summary judgment and declared that plaintiff was entitled to the pension benefits.

TRAN, et al. v NEW ROCHELLE HOSPITAL MEDICAL CENTER, et al.:

1st Dept. App. Div. order of 3/21/02; reversal; leave to appeal granted by Appellate Division, 6/6/02;

TORT - PERSONAL INJURY; CIVIL PROCEDURE - DISCOVERY; PLAINTIFF'S RIGHT TO DISCLOSURE OF DEFENDANT'S SURVEILLANCE TAPES PRIOR TO FURTHER DEPOSITION BY PLAINTIFF (CPLR 3101[i]);

Supreme Court, Bronx County, granted plaintiffs' motion to produce surveillance tapes prior to the injured plaintiff's appearance for further deposition; App. Div. reversed, denied the motion and directed plaintiff to submit to a second disposition prior to disclosure of surveillance materials.