

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
July 5, 2002 through July 11, 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 July 5, 2002 through July 11, 2002 the following jurisdictional statements for appeals were filed:

ABAR (CHRISTOPHER), PEOPLE v:

3RD Dept. App. Div. order of 1/03/02; affirmance, leave to appeal granted by Kaye, Ch.J., 6/06/02;

CRIMES AND CRIMINAL PROCEDURE; ATTORNEYS - ALLEGED CONFLICT OF INTEREST AND INEFFECTIVE ASSISTANCE OF COUNSEL; DEFENSE ATTORNEY WAS FORMER PROSECUTOR IN DEFENDANT'S PROCEEDINGS;

County Court, St. Lawrence County, revoked defendant's probation and imposed a prison sentence; App. Div. affirmed.

BECKER v STATE OF NEW YORK (CLAIM NO. 103881):

Court of Claims order of 5/21/02; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

CIVIL PROCEDURE; COURT OF CLAIMS - IMPROPER MOTION PRACTICE; Court of Claims denied claimant's motion to reconsider the dismissal of his claim for lack of jurisdiction.

BODIE (TERENCE), MATTER OF, v NEW YORK STATE DIVISION OF PAROLE:

1ST Dept. App. Div. orders of 1/17/02 (dismissal for mootness) and 4/04/02 (reargument denied); sua sponte examination of whether a substantial constitutional question is directly involved to support the appeals taken as of right and whether the 4/04/02 order finally determines the proceeding within the meaning of the Constitution;

PRISONS AND PRISONERS; PAROLE - ALLEGED DUE PROCESS VIOLATIONS; Supreme Court, New York County, denied the application to annul a determination denying early parole release; App. Div. dismissed the appeal as moot and denied a subsequent motion for reargument.

EREDICS &c. v CHASE MANHATTAN BANK, et al. and FLUSHING SAVING BANK and NICHOLAS (DEMOS), EXECUTOR OF NICHOLAS (NICK), DECEASED

2ND Dept. App. Div. order of 3/04/02; modification, leave to appeal granted by Court of Appeals, 6/13/02;

DOMESTIC RELATIONS; DECEDENT ESTATE; TOTTEN TRUST - EFFECT OF DIVORCE ON STATUS OF TOTTEN TRUST ABSENT A VALID REVOCATION OF THE TRUST;

Supreme Court, Nassau County, inter alia, granted the plaintiff's motion for summary judgment; App. Div. modified and inter alia, declared that title to the bank accounts vested in plaintiff upon the death of the decedent.

JAMES, AN INFANT &c., et al. v JAMIE TOWERS HOUSING COMPANY, INC. and LANCE INVESTIGATION SERVICE, INC.:

1ST Dept. App. Div. order of 5/28/02; reversal with dissents; CONTRACTS - LANDLORD-TENANT; ALLEGED BREACH OF PREMISES SECURITY CONTRACT - FAILURE TO HAVE A GUARD POSTED IN LOBBY AT THE TIME OF ASSAULT;

Supreme Court, Bronx County, denied defendants' motion and cross-motion for summary judgment; App. Div. reversed, granted the motions and dismissed the complaint and all cross-claims; dissenters would modify and dismiss the complaint and cross-claims against defendant Jamie Towers.

LAMP v COUNTY OF CORTLAND, et al.:

3RD Dept. App. Div. order of 5/30/02; modify with dissents; TORT - PERSONAL INJURY; PRISONER FALL FROM ROOF WHILE CLEANING CELL BLOCK WALL; DUTY; FORESEEABILITY;

Supreme Court, Cortland County, partially denied defendant's motion for summary judgment; App. Div. modified, granted the motion in its entirety and dismissed the complaint; dissenters would affirm.

SCOTT (ALLEN), MATTER OF, v GOORD, COMMISSIONER, et al. (AD 89159):

3RD Dept. App. Div. order of 12/20/01; affirmance; 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; PRISONS AND PRISONERS; ADMINISTRATIVE LAW - ARTICLE 78 REVIEW OF PRISONER DISCIPLINARY PROCEEDING; Supreme Court, Washington County, dismissed petitioner's application for failure to state a cause of action; App. Div. affirmed.

SCOTT (ALLEN) v STATE OF NEW YORK, et al. (AD 86841):

3RD Dept. App. Div. order of 9/21/01; reinstatement of appeal denied; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved; CIVIL PROCEDURE; APPEALS - DENIAL OF MOTION TO REINSTATE APPEAL; App. Div. denied the application to reinstate the appeal.

SCOTT (ALLEN) v STATE OF NEW YORK, et al. (AD 87193):

3RD Dept. App. Div. order of 9/21/01; reinstatement of appeal denied; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved; CIVIL PROCEDURE; APPEALS - DENIAL OF MOTION TO REINSTATE APPEAL; App. Div. denied the application to reinstate the appeal.

SCOTT (ALLEN) v STATE OF NEW YORK, et al. (AD 87038):

3RD Dept. App. Div. order of 9/27/01; reinstatement of appeal denied; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved; CIVIL PROCEDURE; APPEALS - DENIAL OF MOTION TO REINSTATE APPEAL; App. Div. denied the application to reinstate the appeal.

SCOTT (ALLEN) v STATE OF NEW YORK, et al. (AD 89197):

3RD Dept. App. Div. order of 1/22/01; reinstatement of appeal denied; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved; CIVIL PROCEDURE; APPEALS - DENIAL OF MOTION TO REINSTATE APPEAL; App. Div. denied the motion to reinstate the appeal.

WHITE ROSE FOOD, et al. v SALEH:

2nd Dept. App. Div. order of 3/04/02; affirmance with dissent;
leave to appeal granted by Appellate Division, 6/13/02;
DEBTOR - CREDITOR; SUMMARY JUDGMENT; PROMISSORY NOTES - ALLEGED
RELEASE OF GUARANTOR BASED ON SUBSEQUENT AGREEMENT MODIFYING
TERMS OF THE NOTE;
Supreme Court, Queens County, granted plaintiff summary judgment;
App. Div. affirmed; dissenter would reverse and dismiss the
action.