

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
October 4, 2002 through October 10, 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 October 4, 2002 through October 10, 2002 the following jurisdictional statements for appeals were filed:

BOMBAY REALTY CORPORATION, MATTER OF, v MAGNA CARTA, INC., et al.:
3RD Dept. App. Div. order of 4/25/02; affirmance; leave to appeal granted by Court of Appeals, 9/17/02;
CONTRACTS - REAL PROPERTY; LEASES - CONSTRUCTION OF COMMERCIAL LEASE PROVISION REQUIRING TENANT TO PAY ADDED RENT BASED UPON A PERCENTAGE OF ITS "GROSS SALES"; REAL PROPERTY AND PROCEEDINGS LAW ARTICLE 7;
Supreme Court, Albany County, granted petitioner summary judgment; App. Div. affirmed.

LOFTON, PEOPLE ex rel., v DUNCAN:

3RD Dept. App. Div. order of 8/29/02; sua sponte examination of whether a substantial constitutional question is directly involved;

HABEAS CORPUS - PRISONER DISCIPLINARY PROCEEDINGS - SERVICE OF MISBEHAVIOR REPORT; EVIDENCE - CHAIN OF CUSTODY; ENTITLEMENT TO DOCUMENTARY EVIDENCE;

App. Div. denied application for writ of habeas corpus.

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

1ST Dept. App. Div. order of 6/11/02; reversal; leave to appeal granted by App. Div., 9/19/02; Rule 500.4 review pending;

TORT - NEGLIGENCE - ASSUMPTION OF RISK; SUMMARY JUDGMENT;

Supreme Court, Bronx County, granted defendant's motion for summary judgment and dismissed the complaint; App. Div. reversed and reinstated the complaint.

MATRIX FINANCIAL SERVICES CORPORATION v MCKIERNAN, et al.:

2ND Dept. App. Div. order of 6/24/02; affirmance; sua sponte examination of finality and whether a substantial constitutional question is directly involved;

REAL PROPERTY - MORTGAGE FORECLOSURE; CHALLENGE TO SERVICE OF PROCESS FOLLOWING ENTRY OF DEFAULT JUDGMENT - ENTITLEMENT TO A TRAVERSE HEARING; PRIOR ACTION PENDING; NOTICE OF PENDENCY; MOTIONS TO RENEW OR REARGUE;

Supreme Court, Westchester County, inter alia, denied motion to vacate judgment of foreclosure and denied motion for leave to renew or reargue; App. Div. affirmed except to the extent of dismissing the appeal from that portion of the Supreme Court order which denied the motion to reargue.

ANONYMOUS (NICHOLAS P.), MATTER OF:

2ND Dept. App. Div. orders of 7/15/02 and 9/6/02; affirmance and denial of motion for reargument or permission to appeal; sua sponte examination of finality and any jurisdictional predicate for the appeal;

PARENT AND CHILD - NEGLECT; FACTFINDING ORDER AND DISPOSITION ENTERED ON DEFAULT FOLLOWING MOTHER'S FAILURE TO APPEAR AT DISPOSITIONAL HEARING (FAMILY COURT ACT § 1042);

Family Court, Kings County, denied respondent's motion to vacate an order of factfinding and disposition; App. Div. affirmed and denied motion for reargument or permission to appeal.

STATES, et al. v LOURDES HOSPITAL, et al.:

3RD Dept. App. Div. order of 8/22/02; reversal;

TORT - PERSONAL INJURY - MEDICAL MALPRACTICE; RES IPSA LOQUITUR - USE OF EXPERT MEDICAL TESTIMONY TO ESTABLISH THAT INJURY ORDINARILY DOES NOT OCCUR IN THE ABSENCE OF NEGLIGENCE; SUMMARY JUDGMENT;

Supreme Court, Broome County, denied defendants' motion for summary judgement dismissing the complaint; App. Div. reversed and dismissed the complaint.

STRIEGEL v HILLCREST HEIGHTS DEVELOPMENT CORPORATION:

4TH Dept. App. Div. order of 11/12/99; affirmance; sua sponte examination of whether appellant is aggrieved by the Appellate Division order and whether appellant's failure to perfect the appeal at the Appellate Division precludes it from taking an appeal;

TORT - PERSONAL INJURY; LABOR LAW § 240(1) - TYPE OF HAZARD LABOR LAW § 240(1) WAS DESIGNED TO PROTECT AGAINST; Supreme Court, Erie County, granted partial summary judgment on liability to plaintiff; App. Div. affirmed; Supreme Court subsequently entered judgment awarding damages to plaintiff.