

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**January 24, 2003 through January 30, 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 January 24, 2003 through January 30, 2003 the following jurisdictional statements for appeals were filed:

CIPRIANO v GLEN COVE LODGE #1458, B.P.O.E., et al. and BUFFA:  
2<sup>ND</sup> Dept. App. Div. order of 9/16/02; affirmance and modification; leave to appeal granted by Court of Appeals, 1/14/03;

CONTRACTS - SALE OF REAL PROPERTY; SELLERS' OBLIGATIONS OF GOOD FAITH AND FAIR DEALING TO DELIVER GOOD AND MARKETABLE TITLE; EXISTENCE OF CONDITION PRECEDENT TO HOLDING PURCHASER IN DEFAULT UNDER THE TERMS OF A CONTRACT FOR THE SALE OF REAL PROPERTY; VALIDITY OF PRIOR AGREEMENT GRANTING NON-PARTY A RIGHT OF FIRST REFUSAL TO REPURCHASE THE PROPERTY AND NON-PARTY'S ALLEGED INABILITY TO EXERCISE THAT RIGHT; EFFECT OF THE RIGHT OF FIRST REFUSAL AND PURCHASER'S DEFAULT ON EACH OTHER; APPELLATE COURT'S CONSIDERATION OF FAILED SETTLEMENT NEGOTIATIONS;

Supreme Court, Nassau County, granted the motion of defendants Glen Cove Lodge and Glen Cove Elks for summary judgment dismissing the complaint as against them and defendant Buffa's cross claim and granting counterclaim of Glen Cove Lodge and Glen Cove Elks against plaintiff for a judgment declaring that they were entitled to retain plaintiff's down payment because they lawfully canceled the sales contract; granted Buffa's motion for summary judgment insofar as it sought dismissal of the complaint as against him; denied Buffa's motion for summary judgment insofar as it sought specific performance of his right of first refusal; and entered judgment accordingly; App. Div., inter alia, affirmed so much of the Supreme Court order as granted summary judgment to Glen Cove Lodge and Glen Cove Elks on their counterclaim against plaintiff, modified the judgement by adding a provision declaring that Glen Cove Lodge and Glen Cove Elks are entitled to retain the plaintiff's down payment as they lawfully canceled the contract and affirmed the judgment as so modified.

DYNO, et al. and DYNO v LEWIS, et al.:

3<sup>rd</sup> Dept. App. Div. order of 12/12/02; affirmance; 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; APPEAL - PROPRIETY OF SUPREME COURT ORDER DENYING PLAINTIFFS' MOTION TO VACATE A PRIOR SUPREME COURT ORDER; Supreme Court, Broome County, denied plaintiffs' motion to vacate a prior order of that court; App. Div. affirmed

HOM v HOM:

2<sup>nd</sup> Dept. App. Div. order of 5/23/02; sua sponte examination of whether a substantial constitutional question is directly involved; APPEAL - APPELLATE DIVISION; PROPRIETY OF DENIAL OF MOTION TO ENLARGE THE TIME TO PERFECT AN APPEAL AND DISMISSAL OF APPEAL FOR FAILURE TO TIMELY PERFECT; Appellate Division denied defendant's motion to enlarge the time to perfect and dismissed the appeal.

JOHNSON (ROBERT), PEOPLE v:

1<sup>st</sup> Dept. App. Div. order of 11/14/02; affirmance; leave to appeal granted by Smith, J., 1/6/03; CRIMES AND CRIMINAL PROCEDURE - EVIDENCE - EXCITED UTTERANCES - VICTIM'S STATEMENTS TO POLICE SHORTLY AFTER ASSAULT AND ONE HOUR LATER AT HOSPITAL EMERGENCY ROOM; Supreme Court, New York County, entered judgment convicting defendant of assault in the first degree and resisting arrest; App. Div. affirmed.

STIGGINS (LAURA), PEOPLE v:

County Court, County of Livingston, order of 7/19/02; affirmance;  
leave to appeal granted by Smith, J., 1/10/03;

CRIMES AND CRIMINAL PROCEDURE - TRIAL - CONDUCT OF TRIAL JUDGE -  
TRIAL JUDGE'S FAILURE TO CONDUCT VOIR DIRE (CPL § 270.15) AND  
ALLEGED INABILITY TO SUPERVISE THE TRIAL; PROSECUTORIAL  
MISCONDUCT - PROSECUTOR'S ALLEGED "JUDICIAL ROLE" IN CONDUCTING  
TRIAL;

Town Court, Town of Mt. Morris, entered judgment convicting  
defendant of assault in the third degree and endangering the  
welfare of an incompetent person; County Court affirmed.