

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**February 21, 2003 through February 27, 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 February 21, 2003 through February 27, 2003 the following jurisdictional statements for appeals were filed:

CUNNINGHAM v DWYER, et al.:

4<sup>th</sup> Dept. App. Div. order of 2/7/03; denial of CPLR article 78 petition; sua sponte examination of whether a substantial constitutional question is directly involved;  
CRIMES - FORMER JEOPARDY; PROCEEDING AGAINST BODY OR OFFICER - ARTICLE 78 PROCEEDING - WRIT OF PROHIBITION AGAINST JUDGE AND DISTRICT ATTORNEY; TRIALS IN TWO COUNTIES ON INDICTMENTS FOR FORGERY INVOLVING SOME OF THE SAME CHECKS;  
Appellate Division, Fourth Department, denied petitioner's CPLR article 78 petition seeking a writ of prohibition.

DOMEN HOLDING CO. v ARANOVICH, et al.:

1<sup>ST</sup> Dept. App. Div. order of 1/7/03; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;  
LANDLORD AND TENANT - NUISANCE - CHALLENGE TO DETERMINATION THAT, AS A MATTER OF LAW, ALLEGED ACTS OF TENANT'S NON-LESSEE ROOMMATE DID NOT CONSTITUTE A NUISANCE; COURT'S ABILITY TO CONSIDER ALLEGATIONS OUTSIDE THE TENANT'S NOTICE OF EVICTION IN EVALUATING THE LEGAL SUFFICIENCY OF LANDLORD'S NUISANCE CLAIM;  
Supreme Court, New York County, denied landlord's motion for summary judgment on its complaint and for an order dismissing tenant's affirmative defense and counterclaim and granted tenant's cross motion for summary judgment dismissing the complaint; App. Div. affirmed and denied landlord's motion seeking a stay and other related relief.

GREEN, AS ADMINISTRATRIX OF THE ESTATE OF ROBERT GREEN, SR., ALSO KNOWN AS ROBERT L. GREEN, SR. &c. v MOWER and MOWER:

4<sup>ST</sup> Dept. App. Div. order of 2/7/03; reversal, with dissents;  
500.4 review pending;  
TORTS - WRONGFUL DEATH - PROPRIETY OF SUMMARY JUDGMENT IN DEFENDANTS' FAVOR;  
Supreme Court, Herkimer County, denied defendants' motion seeking summary judgment dismissing the complaint; App. Div. reversed, granted the motion and dismissed the complaint.

MITCHELL v BRESLIN:

Appellate Division Justice refused to sign an order to show cause seeking to commence a CPLR article 78 proceeding; sua sponte examination of whether the appeal is taken from an appealable paper as required by CPLR 5512;  
PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS TO COMPEL;  
CHALLENGE TO APPELLATE DIVISION JUSTICE'S REFUSAL TO SIGN ORDER TO SHOW CAUSE TO COMMENCE A CPLR ARTICLE 78 PROCEEDING.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, et al. v COUNCIL OF THE CITY OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 1/14/03; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;  
MUNICIPALITIES - LOCAL LAWS - PREEMPTION; LABOR UNIONS - HOSPITAL SECURITY GUARDS; PEACE OFFICERS - VALIDITY OF LOCAL LAW 16 OF 2001 MANDATING USE OF "PEACE OFFICERS" APPOINTED PURSUANT TO CRIMINAL PROCEDURE LAW 2.10(40) AS HOSPITAL SECURITY GUARDS; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION ACT (MC KINNEY'S UNCONSOLIDATED LAWS OF NEW YORK § 7381, et seq.);  
Supreme Court, New York County, granted defendant City Council's cross motion for summary judgment, declared Local Law 16 of 2001 valid and directed plaintiffs to comply with its mandates; App. Div. reversed, denied defendant City Council's cross motion and granted plaintiff New York City Health and Hospitals Corporation's motion for summary judgment and other relief to the

extent of declaring Local Law 16 invalid.