

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
September 19, 2003 through September 25, 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 September 19, 2003 through September 25, 2003 the following jurisdictional statements for appeals were filed:

CHANG v GOORD:

1ST Dept. App. Div. order of 6/20/02; affirmance; leave to appeal granted by Court of Appeals, 9/4/03; Rule 500.4 review pending; PRISONS AND PRISONERS - JAIL TIME CREDIT - PRISONER'S ENTITLEMENT TO JAIL TIME CREDIT AGAINST HIS NEW YORK STATE SENTENCE FOR TIME SPENT IN FEDERAL CUSTODY (PENAL LAW § 70.30[3]); Supreme Court, New York County judgment dismissing CPLR article 78 petition seeking a direction to respondents to recalculate petitioner's credit for time spent in jail; App. Div. affirmed.

CUNNINGHAM (GREGORY), PEOPLE v:

3RD Dept. App. Div. order of 6/12/03; affirmance; leave to appeal granted by Spain, J., 8/12/03;
CRIMES AND CRIMINAL PROCEDURE - FORGERY - WHETHER DEFENDANT'S ACT OF SIGNING HIS OWN NAME TO A CHECK WITHOUT AUTHORITY FROM THE ACCOUNT HOLDER/COMPANY TO DO SO CONSTITUTES FORGERY IN THE SECOND DEGREE (PENAL LAW § 170.10);
Montgomery County Court judgment convicting defendant of forgery in the second degree; App. Div. affirmed and remitted to County Court for further proceedings pursuant to CPL 460.50(5).

GENERAL ELECTRIC CAPITAL CORP., MATTER OF, v NEW YORK STATE DIVISION OF TAX APPEALS, TAX APPEALS TRIBUNAL, et al.:

3RD Dept. App. Div. order of 1/16/03; confirmation; leave to appeal granted by Court of Appeals, 9/2/03;
TAXATION - TAX REFUND - WHETHER 20 NYCRR 534.7(b), PROVIDING THAT A REFUND OR CREDIT OF SALES TAX REMITTED TO THE STATE ON AN UNCOLLECTIBLE DEBT IS NOT AVAILABLE TO A THIRD-PARTY ASSIGNEE OF THE DEBT, CONFLICTS WITH GENERAL OBLIGATIONS LAW § 13-101;
Appellate Division, Third Department confirmed Tax Appeal Tribunal's determination sustaining the denial of a sales tax refund and dismissed petitioner's CPLR article 78 petition.

NOTRE DAME LEASING, LLC v ROSARIO, et al.:

2ND Dept. App. Div. order of 6/23/03; affirmance; leave to appeal granted by App. Div., 9/5/03;
LANDLORD AND TENANT - SUMMARY PROCEEDINGS WHETHER A WELFARE RECIPIENT MAY RAISE EXISTING VIOLATIONS PURSUANT TO SOCIAL SERVICES LAW § 143-b (THE "SPIEGEL LAW") AS A DEFENSE IN A NONPAYMENT PROCEEDING WHERE PUBLIC WELFARE OFFICIALS, WHO PAY A PORTION OF THE RECIPIENT'S RENT DIRECTLY TO THE LANDLORD, HAVE NOT TAKEN STEPS TO WITHHOLD THEIR SHARE OF THE RENT;
Civil Court, Queens County granted tenants' motion to dismiss the proceeding to the extent of staying the proceeding until the landlord submitted satisfactory proof that certain violations had been corrected; App. Term reversed the order and denied tenant's motion; App. Div. affirmed.

REAL HOLDING CORP., et al. v LEHIGH, et al.:

2ND Dept. App. Div. order of 4/7/03; affirmance; leave to appeal granted by Court of Appeals, 9/11/03;
MUNICIPAL CORPORATIONS - ZONING - WHETHER TOWN LAW § 274-b AUTHORIZES TOWN ZONING BOARD OF APPEALS TO GRANT AREA VARIANCES FROM SPECIAL USE PERMIT CRITERIA;
Supreme Court, Westchester County granted CPLR article 78 petition to review determination of Zoning Board of Appeals (ZBA) that it lacked jurisdiction to issue variances with respect to special use permit criteria, annulled the determination and remitted the matter to the ZBA for further proceedings; App. Div. affirmed.