

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**October 17, 2003 through October 23, 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 October 17, 2003 through October 23, 2003 the following jurisdictional statements for appeals were filed:

BRUNI v CITY OF NEW YORK, et al.:

2<sup>ND</sup> Dept. App. Div. order of 2/24/03; reversal; leave to appeal granted by Court of Appeals, 9/9/03;

MUNICIPAL CORPORATIONS - SIDEWALKS - PRIOR NOTICE OF DEFECTIVE CONDITION - WHETHER MUNICIPAL AGENCY OTHER THAN NEW YORK CITY DEPARTMENT OF TRANSPORTATION MAY PROVIDE "WRITTEN ACKNOWLEDGMENT FROM THE CITY" OF A DEFECTIVE CONDITION UNDER NEW YORK CITY'S "POTHOLE LAW" (ADMINISTRATIVE CODE § 7-201[c]);

Supreme Court, Kings County judgment in plaintiff's favor following denial of defendant's oral application pursuant to CPLR 4401 for judgment as a matter of law made at the close of the evidence; App. Div. reversed, granted defendant's CPLR 4401 application and dismissed the complaint.

CASEY v RUFFINO, et al.:

2<sup>ND</sup> Dept. App. Div. order of 6/9/03; reversal; sua sponte examination whether the Appellate Division had authority to grant leave to appeal on a certified question in this case;  
ATTORNEY AND CLIENT - COMPENSATION - CONTINGENCY FEE CASE - STANDARD TO BE APPLIED IN FIXING ATTORNEY'S FEES FOR WORK RENDERED BY LAW FIRM PRIOR TO DISBARMENT OF LAW FIRM'S PRINCIPALS (22 NYCRR 603.13[b], 690.10[b]); CONTRACTS - STANDING - VALIDITY OF CONTRACT;  
Supreme Court, Kings County judgment entered upon an order awarding a percentage share of the attorney's fees in underlying personal injury action to nonparty Lysaght, Lysaght & Kramer, P.C. against nonparty Decolator, Cohen & DiPrisco, LLP; App. Div. reversed judgment, vacated order and remitted matter to Supreme Court for a new hearing.

DAILEY v KEITH:

4<sup>TH</sup> Dept. App. Div. order of 6/13/03; affirmance; leave to appeal granted by App. Div., 10/2/03; Rule 500.4 review pending;  
TRIAL - EVIDENCE - CLAIMED ERRONEOUS PRECLUSION AND ADMISSION OF EVIDENCE - TRIAL COURT'S REFUSAL TO ALLOW READING OF DEPOSITION OF PARTY ABSENT FROM TRIAL (CPLR 3117[a][3][ii]) - TRIAL COURT'S ALLOWANCE OF TESTIMONY OF EXPERT RETAINED CLOSE IN TIME TO TRIAL; JURY CHARGE - TRIAL COURT'S REFUSAL TO INCLUDE MISSING WITNESS CHARGE;  
Supreme Court, Steuben County judgment awarding plaintiff Randall Dailey \$240,000 against defendants; App. Div. affirmed.

FRANKEL v FRANKEL, et al.:

2<sup>ND</sup> Dept. App. Div. order of 9/8/03; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;  
ATTORNEY AND CLIENT - COMPENSATION - STANDING - WHETHER DISCHARGED ATTORNEY IN MATRIMONIAL ACTION HAS RIGHT TO SEEK IN HIS/HER OWN NAME RETROSPECTIVE COUNSEL FEES AGAINST ADVERSARY SPOUSE (DOMESTIC RELATIONS LAW § 237[a]);  
Supreme Court, Nassau County order granted motion of defendant wife's former attorneys for an award of an attorney's fee against plaintiff husband and referred the issue of the amount of fees owed to a Special Referee to hear and report; App. Div. reversed and denied the motion.