

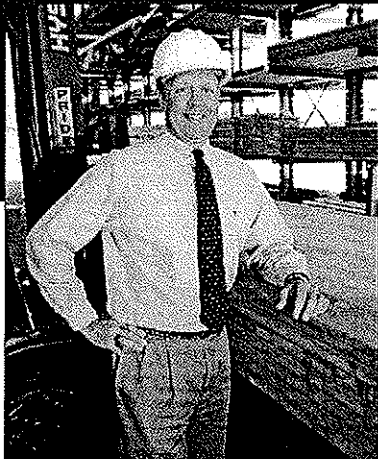
Construction professionals rely on Rob to provide them with the best home-building materials...

...but when it comes to building his business, Rob relies on the financial professionals to provide a solid foundation.

He chooses AVZ.

More than an accounting firm, AVZ is dedicated to making your organization operate more efficiently.

Call AVZ and discover what so many of our satisfied clients already know... at AVZ, we're more than just accountants.



Rob Holden
President of Florence
Building Materials

Albrecht, Viggiano, Zureck & Company, P.C.
More than just accountants.



CERTIFIED PUBLIC ACCOUNTANTS, BUSINESS ADVISORS AND CONSULTANTS
25 Suffolk Court, Hauppauge, New York 11788
631.634.9500 • Fax 631.434.9318
www.avz.com

BKR
BANKERS TRUST COMPANY
Member of the BNY Mellon Group

More Than 40 Years Of Significant Experience In:
CONDEMNATION, TAX CERTIORARI, ZONING,
LAND USE LITIGATION, COMMERCIAL
AND REAL PROPERTY LITIGATION

**Flower, Medalie
& Markowitz**

24 E. Main Street Suite 201
Bay Shore, NY 11706
(631) 968-7600 Fax: (631) 665-4293

APPELLATE

The Power Of An Appeal

Preserve the right to take an appeal to the Appellate



Anthony F.
DeStefano

By Anthony F. DeStefano

An appeal is a powerful tool that can be used by the savvy practitioner as a "second chance" to obtain desired results, and the loss of this opportunity can have a devastating effect on his case. Thus, it is important to preserve, whenever possible, the right to take an appeal to the Appellate Division. While there are obvious situations that trigger the filing of a Notice of Appeal, for example, within 30 days of an Order denying the relief sought, there are other, less obvious situations which require additional steps to be taken before the Notice of Appeal can be filed. This article will discuss one of those "less obvious" situations.

In the case of *Perez v. Creations Associates, L.P.* (11 A.D.3d 328 [1st Dept. 2004]), at trial, the third-party defendant moved to dismiss the third-party action against it at the close of evidence. After oral argument was heard, the trial court denied the third-party defendant's motion, rendering an oral decision from the bench.

The trial court's decision was not reduced to writing. Due to post-trial motions and a subsequent re-trial, however, two years passed. The third-party defendant then moved to renew the trial court's decision denying its earlier motion on the grounds that there had been a change in the law since the original decision. The trial court denied the third-party defendant's motion and an appeal was taken.

Pursuant to CPLR 5701(a)(2), an order granting or denying a motion for leave to renew made pursuant to CPLR 2221 is appealable as of right. However, there has long been precedent in the Appellate Division, Second Department, that no appeal lies from an order denying a motion to renew a trial court's decision (*De Falco v. JRS Confectionary, Inc.*, 118 A.D.2d 752 [2nd Dept. 1986]). Thus, according to the Second Department, only the order denying a motion to renew an order is appealable.

Of course, the logic supporting the dis-

missal of an appeal from an order denying a motion to renew a decision is that no appeal lies from a decision (*Rooney v. Webb*

Avenue Associates, Ltd., 1 A.D.3d 246 [1st Dept. 2003]). By statute, a trial court's decision does not constitute an appealable piece of paper (see CPLR 5701). Therefore, as the appellant could not have taken an appeal from the original decision denying its motion, it could not be permitted to circumvent that well settled principle simply by appealing from the order denying its motion to renew.

Accordingly, in *Perez v. Creations Associates*, the First Department adopted this rule and dismissed the third-party defendant's appeal. The First Department specifically found that the original motion had been "denied in an unappealable oral decision" (*Perez v. Creations Associates, supra* at 328, citing *DeFalco v. JRS*). Therefore, the instant appeal "must be dismissed" (*Perez v. Creations Associates, supra* at 328).

As a practical matter, even when making a motion to renew or reargue, trial counsel should always be sure to reduce an unfavorable decision by the trial court to an order. Trial counsel should then timely take an appeal from that order. In such instance, even if trial counsel does not perfect the appeal, and subsequently withdraws the appeal, he will have properly preserved his client's right to pursue this issue in an appeal from the judgment if they so choose.

Note: The author is a senior associate of Masaro Goldberg & Lilling. Prior to joining the firm, he was an associate of Ahmuty, Demers & McManus, Esqs., in the Insurance Coverage Litigation department. He has handled numerous appeals on a broad range of issues. In particular, he concentrates his area of practice on insurance coverage disputes.

Suffolk County Bar Association Charity Foundation

(Continued from page 3)

received over \$100,000.00 to build a wing on one of its safe havens. This past summer, a gift was endowed to sponsor a program for the Suffolk County Probation Department called NextUs that integrates adventure therapy with meditation and Yoga to at risk teens that have had juvenile proceedings brought against them.

And, in keeping with her love for lawyers and the legal profession she worked in for over 60 years, she gave \$100,000.00 dollars to the Suffolk County Bar Association to set up the Foundation to be used by the Bar for Charitable Purposes — to help the needy and to help enhance the image of lawyers in the Community.

As Chairman of the Suffolk County Bar Association Charitable Foundation, our goal is to keep the Foundation viable over the years with donations and to use the money in the Community for charitable and worthwhile purposes. One of our first efforts will be to use the Foundation money to enhance the drug education programs at some of our less fortunate high schools in Suffolk County and encourage programs that educate our young-

sters that violence against each other leads to terrible harms, in the community and in the home.

We need lawyers for this committee: lawyers who truly want to make a difference, that have insightful ideas that will help us to use this gift to enhance the community's perception of lawyers. I need your help and the Bar Association needs your help. Please send your ideas, and request to help to: Jhanshe@hansheLaw.com or jhanshe@suffolkbar.net. Your donations should be sent directly to the Executive Director of the Bar Association. Thank you, I know you will not let us down. Remember, on occasion, good deeds do get rewarded!

Note: The author, practices law with his son, Gerard E. Hanshe Esq. at the firm of Hanshe & Hanshe PLLC, Sayville. His primary areas of practice are in the fields of Medical Malpractice, Criminal Law, Estates and Trusts and he has been designated by the Office of Court Administration as an Article 81 Court Evaluator and Court Examiner for the Appellate Division Second Department.