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Inside this issue

Attorney "Automatically Disbarred" For Mortgage Fraud 1
Jenny Exhausts Her Luck 1
AD2 Revisits Yellowstone 2
Do You Suffer From Insomnia? 2
Why Machetes Aren't Good For Evictions 3
Was The Elevator Running? 3
Something To Chew On? 3
Whose Sidewalk Is It? 4

ATTORNEY "AUTOMATICALLY DISBARRED" FOR MORTGAGE FRAUD

In *Matter of Brown*, the Departmental Disciplinary Committee for the First Judicial Department (DDC) sought to prevent L. Brown from practicing law in New York State. Brown, together with others, had reportedly stolen more than $1.35 million from a mortgage company and eventually pled guilty to a series of felonies: grand larceny in the first degree, grand larceny in the second degree, and falsifying business records in the first degree.

To compound matters a bit further, Brown didn't report her conviction to the DDC, as required by state law. Apparently, the DDC learned of Brown's guilty plea from the Kings County District Attorney's Office. The DDC contended that Brown had been "automatically disbarred" upon her conviction of a felony. (That position was unopposed by Brown.)

Upon review, the Appellate Division, First Department, concluded that "a conviction for any criminal offense classified as a felony under the Laws of this State results in automatic disbarment by operation of law." As a result, the AD1 granted the DDC's request.

The appellate court further noted that while Brown hadn't been sentenced, the outcome was still appropriate, since "the date of entry of a guilty plea is the date of conviction that triggers automatic disbarment."

Unfortunately, we're barred from any further analysis of that case.

JENNY EXHAUSTS HER LUCK

In *Princeton Insurance Co. v. Jenny Exhaust Systems, Inc.*, Princeton sought damages for injury to property after work performed by Jenny Exhaust Systems was alleged to have caused a restaurant fire.

Jenny asked the Queens County Supreme Court to dismiss Princeton's case based on "spoliation" -- the destruction or alteration of evidence. Although that relief had been denied, Jenny reiterated its dismissal request after it received photographs of the fire scene. Once again, the Supreme Court was unwilling to extinguish the case since discovery hadn't been completed.

On appeal, the Appellate Division, Second Department, noted that Jenny failed to pursue certain objections when its first motion had been rebuffed by the Supreme Court. Since no justification was offered for that omission, the appellate court declined to consider those objections on appeal. Furthermore, since the parties hadn't yet engaged in discovery, the AD2 was of the opinion that Jenny was way too premature.

"Jenny, I've got your number!"

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AD2 REVISITS YELLOWSTONE

In *Xiotis Rest. Corp. v. LSS Leasing Ltd. Liab. Co.*, Xiotis sought to obtain a "Yellowstone" injunction against LSS Leasing.

A "Yellowstone" allows a tenant to stop the running of the time-period delineated in a landlord's default notice while the merits of the parties' dispute are being litigated. (The remedy is intended to allow a tenant to address the default(s) while avoiding a termination of the tenancy and forfeiture of a lease.)

To secure this special injunction, a tenant must demonstrate that: "1) it holds a commercial lease; 2) it has received from the landlord a notice of default; 3) its application for a temporary restraining order was made prior to expiration of the cure period and termination of the lease; and 4) it has the desire and ability to cure the alleged default by any means short of vacating the premises."

When the Queens County Supreme Court granted Xiotis' request, LSS appealed to the Appellate Division, Second Department, arguing that the tenant hadn't satisfied the governing elements.

The AD2 disagreed and concluded that Xiotis had timely received a temporary restraining order and sufficiently demonstrated it had the ability and desire to address the alleged defaults (thus entitling it to the awarded equitable relief).

There's no X'ing out Xiotis, just yet!

DO YOU SUFFER FROM INSOMNIA?

Did you happen to catch the May 2008 edition of the *New York State Bar Association Journal*? (It's the one with dead fish all over the front cover.)

On page 64, you'll find a column authored by distinguished Housing Court Judge Gerald Lebovits.

Judge Lebovits regularly opines in the *Journal* on legal writing do's and don'ts. This month, he addresses "Legal Writing Punctuation."

You can imagine our surprise when we came across a disparaging reference to the award-winning, critically acclaimed, 2000-page, two-volume treatise -- Landlord and Tenant Practice in New York -- which partner Lucas A. Ferrara co-authored with partner, Daniel Finkelstein.

In a section of the article, demonstrating the proper use of "em and en dashes," this is what you'll find:

> In this example, the hyphen, en dash and em dash are used correctly: "Ms. Smith-Jones spent five minutes reading the Finkelstein–Ferrara text on landlord-tenant practice — and promptly fell asleep."

Finkelstein–Ferrara promptly called their respective lawyers — and have filed to have their book patented as a sleep aid!

If you have any questions or comments about the preceding articles, please contact partner Jonathan H. Newman at 212-619-5400 x 205 or email him at JNewman@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

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WHY MACHETES AREN'T GOOD FOR EVICTIONS

After renting out his basement for four months, Norman Beckford approached his tenant and gave him a week to find a new place.

Inexplicably, the next night, the tenant returned to find his belongings in the driveway.

In response to ten minutes of banging on his door, Beckford reportedly lunged at the tenant with a machete and struck him four times.

When the Queens County Supreme Court found Beckford guilty of assault in the second degree and criminal possession of a weapon in the second degree, he appealed to the Appellate Division, Second Department, contending that he acted with "criminal negligence," since he lacked the intent to cause "serious physical injury or physical injury," and that the jury should have been instructed on "the justifiable use of 'physical force' and 'deadly physical force'."

Because he had attacked the tenant multiple times with a five pound machete, the AD2 didn't believe Beckford was using "anything other than deadly physical force." Nor did the appellate court find a "justification charge" was supported by the evidence.

Anybody want to take a stab at that?

WAS THE ELEVATOR RUNNING?

In *Lapin v. Atlantic Realty Apts. Co., LLC*, Toni Lapin filed a personal injury suit after her apartment building's elevator door closed on her hand.

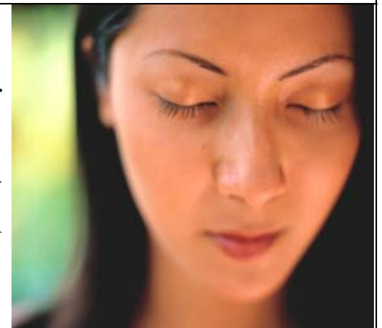
Apparently, there had been no prior complaints of a malfunctioning elevator from Lapin or any other building resident. In addition, the elevator had been renovated just a few months prior to Lapin's injury and the company servicing the elevator hadn't noted any problems.

Faced with that evidence, the New York County Supreme Court granted Atlantic Realty's request to dismiss the case.

On appeal, the Appellate Division, First Department, affirmed, noting that Lapin "had failed to raise an issue of fact" concerning "the existence of a defect." Her expert's analysis wasn't helpful since that individual inspected the elevator four years after Lapin's injury. And while Lapin claimed elevator complaints had been made, without proof, her claim faltered.

With that, Lapin's case got the shaft.

SOMETHING TO CHEW ON?



In *Yu Han Young v. Chiu*, Yu Han Young sued Cathy Chiu to compel her to transfer certain real property.

Apparently, Chiu took it upon herself to promote her own personal interests by "secretly establishing a competing entity and acquiring the property at issue." When Young got wind of the arrangement, litigation was filed to force Chiu to divest a 50% interest in the real property at issue.

When the Queens County Supreme Court granted Young's request, Chiu appealed to the Appellate Division, Second Department, which concluded that Chiu, as a corporate officer, owed the company her "undivided loyalty."

Since Chiu diverted and exploited a company asset for her own benefit, the AD2 found that she violated her "fiduciary duty," and had been properly ordered to transfer 50% of the property to Young.

Chiu probably thinks that bites!

If you have any questions or comments about the preceding articles, please contact partner Lucas A. Ferrara at 212-619-5400 x 211 or email him at LFerrara@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

WHOSE SIDEWALK IS IT?

In *Rodriguez v. City of New York and 250 Mona Corp.*, Aracelis Rodriguez filed suit after she slipped and fell in front of an "Associated Supermarket" owned by 250 Mona Corp. (Mona).

Rodriguez's accident occurred in August of 2001, several years before New York City amended its sidewalk liability laws.

Prior to 2003, the City was responsible for public sidewalks, unless the landowner created the defective condition or undertook a "special use." If the latter could be shown, liability then shifted to the owner.

When the Bronx County Supreme Court denied Mona Corp's request to dismiss the case, the company appealed to the Appellate Division, First Department.

Without evidence that the duty shifted to Mona, the AD1 was of the opinion the case should be dismissed. The store's use of the sidewalk for deliveries wasn't the kind of "use" which triggered liability under the law.

We're guessing Mona was smiling after that decision.

If you have any questions or comments about this article, please contact partner Daniel Finkelstein at 212-619-5400 x 209 or email him at DFinkelstein@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

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