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A STICKY ICKY BLAZE?

In *People v. Christianson*, Douglas Christianson was charged with criminal possession of marijuana in the second degree and unlicensed growing of cannabis.

Fire officials, called to Christianson's mobile home to extinguish a fuel-oil blaze, had problems ventilating the area due to boarded-up windows and a padlocked interior exit door.

When the Fire Chief called in a Sheriff's Deputy to assess the incident's cause, the latter noticed a nug of marijuana resting on a coffee table. After the Deputy demanded and secured access to the padlocked area -- where several marijuana plants and cultivation equipment were uncovered -- Christianson made incriminating statements to the officer.

Once the Wayne County Court convicted Christianson, who pled guilty to possession and growing charges, he appealed to the Appellate Division, Fourth Department.

While warrantless searches and seizures are available when there is "an immediate danger to life or property," the AD4 didn't think that exception applied to this case.

Since the fire had been extinguished by the time the Sheriff's Deputy arrived, and no emergency situation existed, the AD4 reversed the conviction and sent the case back for retrial -- but, this time, Christianson's plants, growing materials, and incriminating statements can't be used as evidence or introduced at that hearing.

Bet Christianson found that just spliffy.

COUPLE CLEANS UP AFTER EXPLOSION

After Preferred Mutual Insurance Company denied coverage for property damage reportedly caused by a chemical plant explosion, Francis and Anita Trupo filed suit.

When the Monroe County Supreme Court found in the couple's favor, Preferred appealed to the Appellate Division, Fourth Department.

The AD4 thought the incident was a covered event and qualified as an "explosion" under the policy's terms and conditions. (A "contamination" exclusion didn't apply since this was a "sudden occurrence," rather than "wear and tear" or exposure "that occurred over time.")

Two dissenting judges would have denied the claim. While they agreed the incident was an "explosion," they were of the belief the policy's language specifically disclaimed a recovery for any form of contamination.

Will Preferred be a trouper and honor the claim or will the company prefer to force the Trupos up to the Court of Appeals?

Fulminate over that.

IF YOU FALL OFF THIS ROOF, DON'T GET BACK ON!

After falling off the roof of his brother's home, Kevin Luthringer filed "Labor Law" and common-law negligence claims against Gregory Luthringer. (Both agreed Gregory had purchased the materials for the project, that the brothers both worked on the structure, and, that neither "supervised the project or the method or manner of the work.")

When the Erie County Supreme Court denied Gregory's request to dismiss the case, he appealed to the Appellate Division, Fourth Department.

The AD4 found New York State's Labor Law inapplicable as Kevin volunteered to help his brother, and wasn't fulfilling an obligation or getting paid. In addition, because Gregory didn't control or supervise Kevin's work in any way, no liability under that statute could be established. And, since Gregory didn't have notice of any dangerous condition which could cause his brother's fall, there was no basis to find negligence either.

That roof razed Kevin.

COURT LIFTS PLAINTIFF FROM CRANE COLLAPSE

When a crane he was operating collapsed -- supposedly due to "improper maintenance" -- Shalabi Ali sued the building's owner, Richmond Industrial Corp. (RIC), in the Richmond County Supreme Court, claiming Labor Law violations.

After RIC was found liable for Ali's injuries, an appeal to the Appellate Division, Second Department, followed.

The AD2 thought RIC wasn't immune merely because it was an out-of-possession landlord. Apparently, there was a "clear nexus" between RIC and Shalabi and none of the other statutory exceptions applied (or were properly raised).

A Shalabi slamdunk!

WHO'S NOT A FAN OF THIS?

In *Guzzone v. Brandariz*, Alice Guzzone gave Linda Brandariz an easement allowing vehicular access, but litigation followed when Guzzone installed air-conditioning units which interfered with that use.

After the Kings County Supreme Court denied Brandariz's request to force the removal of the air-conditioning units and to stop Guzzone from interfering with the easement, an appeal to the Appellate Division, Second Department, followed.

The AD2 found the easement gave Brandariz a "right of passage" rather than a right to the passageway itself. As a result, Guzzone could narrow, cover, gate, or fence-off the area, as long as Brandariz's use wasn't impaired. Since Brandariz conceded she could still enter and exit the property, the AD2 thought the air-conditioning units didn't impact the easement.

Now how cool was that?

WOMAN SUES OVER SPECIAL INGREDIENT

In *Ruggio v. Pccb, Inc.*, Kathleen Ruggio was dining at the Port City Cafe & Bakery (PCCB) when she bit into a foreign object wedged inside of her sandwich.

After she filed suit seeking damages, PCCB asked for the case's dismissal.

When the Oswego County Supreme Court sided with Ruggio, and denied PCCB's request, the latter appealed to the Appellate Division, Fourth Department, which thought it was premature to end the case, since discovery could help uncover facts beneficial to both sides.

Lettuce see how that unfolds.

CADDY SHACK

In *Raux v. Utica*, Ronald Raux Jr. was golfing -- presumably about to make his third eagle shot of the day on the course's twelfth hole -- when he stepped into an abyss, about 18 and 24 inches deep, located to the side of the green and camouflaged by the rough.

According to a witness, a course employee was overheard saying the hole was intended for drainage purposes.

After Raux filed suit against the City of Utica, seeking damages for his injury, the City asked for the case's dismissal. When the Oneida County Supreme Court granted that request, Raux appealed.

The Appellate Division, Fourth Department, found Raux's "speculation," as to why the hole had been dug, insufficient to support his case. Without competent evidence to the contrary, the AD4 was of the view Utica neither created the hole nor had notice of its existence.

What's a golf course without holes?

SLIP-N-SLIDE TO NOWHERE

In *Bellassai v. Roberts Wesleyan College*, Robin Bellassai sued Roberts Wesleyan College (RWC) after she fell on a wet floor in the school's dining hall.

The Monroe County Supreme Court thought RWC wasn't liable for the incident -- since the school neither created the dangerous condition nor had notice of it -- and dismissed the case. On appeal, the Appellate Division, Fourth Department, thought a "general awareness" of a possible dangerous condition wasn't enough to trigger liability and affirmed the dispute's dismissal.

That slip slided away.

HOW WOULD YOU INTERPRET THIS?

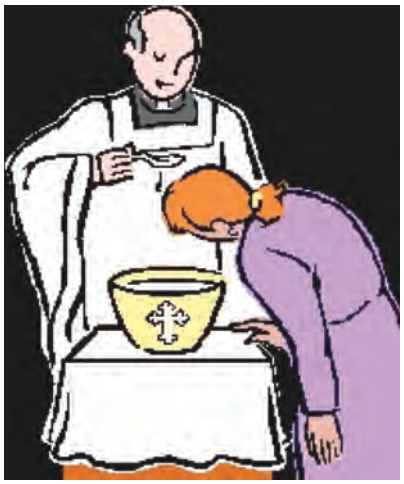
David Singleton was accused of robbery and burglary in the first degree. At his trial, witnesses from India testified in their native tongue and interpreters were utilized.

When the Monroe County Court found Singleton guilty on both counts, he argued to the Appellate Division, Fourth Department, a witness's testimony shouldn't have been considered due to errors in the interpreter's translation.

Since Singleton was unable to show the translation errors were prejudicial, the AD4 refused to grant relief in his favor.

Was he misunderstood?

TRY CONVERTING THIS



In *Mark Hotel LLC v. Madison Seventy-Seventh LLC*, when Madison Seventy-Seventh LLC served its tenant, Mark Hotel LLC, with a notice of lease default, the Hotel sought relief from the New York County Supreme Court.

The tenant wanted to convert part of the building into a "cooperative hotel." Although it asked for the landlord's consent to the renovation plan, when the owner twice failed to object, the tenant relied on a lease provision which provided that the landlord's failure to respond comprised a form of consent to the construction.

After the Supreme Court found in the tenant's favor, the landlord appealed to the Appellate Division, First Department.

While Madison argued the parties' agreement and governing law prohibited the conversion, the appellate court didn't buy it.

The AD1 was of the view the lease unambiguously permitted the premises' use as a "cooperative hotel," and the contemplated change didn't violate governing law.

Will Madison now check out?

THE AD4 DELIVERS!

In *Franklin Park Plaza, LLC v. V&J National Enterprises, LLC*., V&J National Enterprises operated a "Pizza Hut" which shared street entrances and parking spaces with Franklin Park. When the Onondaga County Supreme Court denied Franklin Park's request that V&J pay for that privilege, an appeal to the Appellate Division, Fourth Department, followed.

Since an easement granting use of the property's entrances and parking spaces had been given over three decades prior, the AD4 affirmed the outcome.

In other words, there was no extra dough for that mall.

HOW INCONSPICUOUS WAS THIS?

In *ZOT, LLC v. Crown Associates, Inc*., ZOT brought a nonpayment case against its commercial tenant, Crown Associates.

Although ZOT supposedly served the pleadings by posting them at the space, Crown failed to appear on the scheduled hearing date, a default judgment was entered, and the tenant was ultimately evicted.

When Crown later sought to get back into its space, it alleged defective service of the underlying court papers.

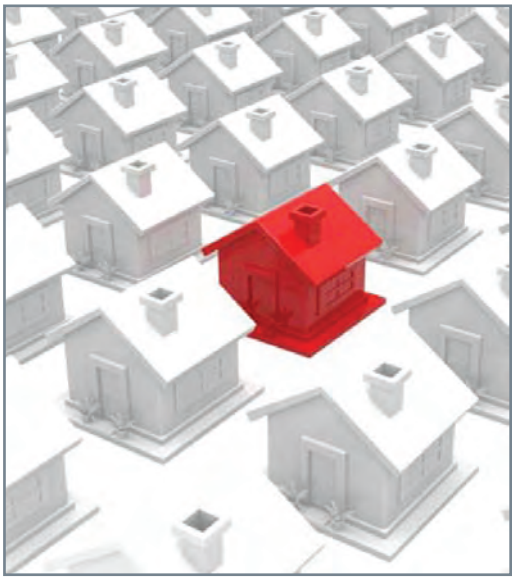
Although ZOT knew Crown's restaurant was closed -- because of a kitchen ceiling collapse -- ZOT affixed the legal papers to the premises' outer gate.

After the Kings County Civil Court denied Crown's request, the tenant appealed to the Appellate Term, Second Department.

The AT2 thought ZOT failed to make a "reasonable application" before resorting to "nail and mail," or conspicuous-place service, and that the tenant's request to vacate the underlying judgment and to be restored to possession should have been granted.

A jewel for that Crown?

IT'S STILL MY HOUSE!



In *Marino v. Termini*, Joseph Marino was one of three owners of a piece of property when the partnership split up in June of 2000, and a court directed the property be sold and the net proceeds distributed.

In October 2001, the property was sold to David Safenia (in accordance with the court's order) and, in June 2002, Safenia sold the property to Jousiph Al-Kadeh and Lillian Lati.

Marino contended that he still had a one-third interest in the property because he never authorized his representative to sign the deed, nor received his share of the sale's proceeds.

The Kings County Supreme Court found Al-Kadeh and Lati to be the property's rightful owners and that Marino didn't retain a one-third interest. It concluded that Marino's claims were barred because they had been determined in the partnership dispute.

Interestingly, on appeal, the Appellate Division, Second Department, didn't think the issues argued by Marino were identical to those raised in the partnership litigation. Nevertheless, the AD2 affirmed the case's outcome because Al-Kadeh and Lati were "bona fide purchasers for value," and Safenia had purchased the property in good faith without notice of Marino's claims.

Termini terminated that.

WAS JUSTICE DISPOSED?

In *Cekic v. Royal-Pak Sys., Inc.*, Isa Cekic was injured when she attempted to remove a bag of garbage lodged at the base of a trash compactor manufactured and installed by Royal-Pak Systems.

Cekic claimed the unit should have automatically deactivated when she opened the hopper door.

After a Kings County Supreme Court jury found against her, Cekic appealed to the Appellate Division, Second Department, which was of the view the jury considered the wrong legal theory. Since there were no warning signs on the compactor, the interlock switch had been negligently designed and failed to conform with accepted industry standards, the AD2 thought the jury should have been allowed to consider Cecil's claims of negligent design, failure to warn, and breach of implied warranty.

Royal-Pak got royally trashed.

L ... O ... S ... E ... R!

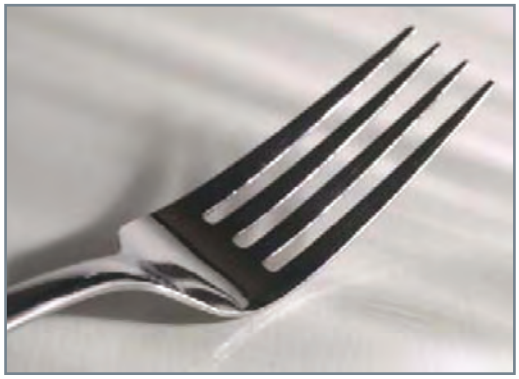
While performing a stunt during cheerleading practice, Cassandra Williams was injured when she fell on her school gym's wood floor. After she filed her negligence case against the Clinton Central School District, the latter asked for the case's dismissal and the Oneida County Supreme Court acquiesced.

On appeal, the Appellate Division, Fourth Department, reiterated that while schools must exercise reasonable care to protect student athletes, when risks are "open and obvious," kids are assumed to have accepted the possibility of harm when they participate in a sporting activity.

In this case, the AD4 found Williams engaged in maneuvers which were obviously dangerous when performed on a bare wood floor and rejected her "speculative and conclusory" argument the school increased the risk of harm by failing to provide practice mats.

Not very sportsmanlike.

DINER AVOIDS GETTING FORKED



In *Kambousi Rest., Inc. v. Burlington Ins. Co.*, Burlington Insurance Company refused to defend and indemnify its insured, Kambousi Restaurant -- doing business as Royal Coach Diner -- on the grounds the insurer hadn't been given timely notice of an incident.

When the Bronx County Supreme Court granted Burlington's dismissal request, Kambousi appealed to the Appellate Division, First Department, which reversed.

Upon learning that a woman had fallen in the parking lot, the establishment's manager inquired whether the individual needed assistance, and was supposedly told by that person's spouse "not to worry" since his wife was "clumsy" and had tripped over her own shoelaces.

The couple then left the area, leaving the manager to believe the restaurant wasn't going to be held responsible for the mishap. That, according to the AD1, established a "good-faith belief of nonliability," which excused Kambousi's late notice.

If you ask us, any other result would have been pretty awkward.

WATCH YOUR STEP!

In *Sabella v. City of New York*, Lisa Sabella sued the New York City Transit Authority (NYCTA) after she was injured while exiting a city bus. Sabella alleged the driver caused her ankle fracture because he failed to provide her with a safe place to exit by not engaging the bus's kneeling device.

When the Richmond County Supreme Court denied NYCTA's request to dismiss the case, the agency appealed to the Appellate Division, Second Department, which reversed the lower court's determination.

Apparently, NYCTA's policy requires a bus be lowered only if it is stopped more than six inches from the curb, or if a passenger is disabled, a senior citizen, or is carrying a baby stroller.

Since the bus was stopped within six inches from a sidewalk which had no defect, and because Sabella didn't fit within any of the established exceptions, the AD2 didn't think the driver had a duty to lower the bus before the passenger disembarked.

Forget the ankle, NYCTA brought Sabella to her knees!

CALIFORNIA, HERE I COME

In *Walker v. Reyes*, when Marianne Walker sued Hector Reyes, the latter claimed the court lacked jurisdiction over him.

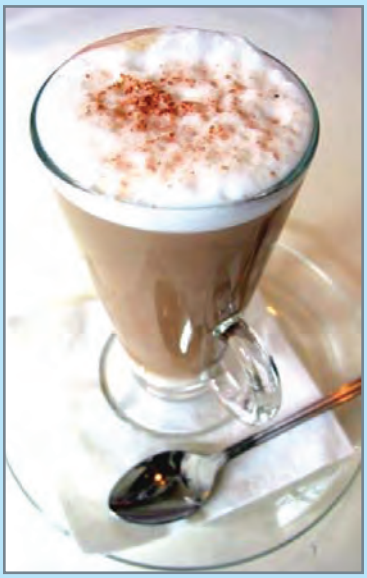
After Walker and Reyes were involved in an accident, Reyes gave officers a New York address, which was on file with the Commissioner of Motor Vehicles (CMV). When Walker later filed suit, and served Reyes at his listed address, Reyes claimed he had relocated to California and that he was no longer a New York resident.

Although he thought it hadn't been required, Reyes admitted he hadn't notified the CMV of his address change.

When the New York County Supreme Court denied his jurisdictional objection, Reyes appealed to the Appellate Division, Second Department, which affirmed the lower court's decision.

New York law requires those holding a driver's license to notify the CMV of an address change within 10 days. Because he failed to do so, Reyes was prevented from challenging service of the pleadings at his New York address.

That certainly didn't serve Reyes.



SPILT...

In *Greco v. Starbucks Coffee Co*., Alexandria Greco was injured when she slipped and fell on the floor of a Starbucks store.

After Greco sued the coffee purveyor and the building's landlord, the Westchester County Supreme Court granted the defendants' request to dismiss the case.

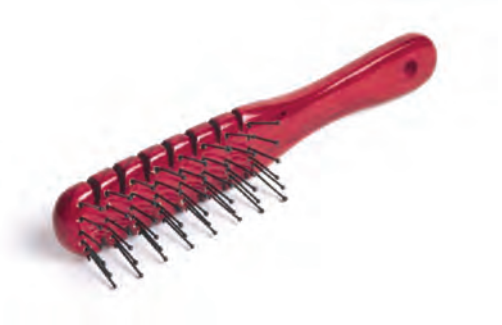
On appeal, the Appellate Division, Second Department, was of the view the "out-of-possession" landlord wasn't responsible for Greco's injuries because it neither retained control of the premises nor was contractually obligated to perform maintenance and repairs.

Not only did Starbucks establish that it didn't create the condition or had actual or constructive notice of the spill, but Greco's evidence was seen as "speculative and without probative value."

Wasn't that a bit too frothy?

MY SON CAN BEAT UP YOURS!

In *Clark C.B. v. Neil Fuller II,* Clark C.B. filed a negligence case against Neil Fuller II and III for injuries Clark's son sustained when the child was assaulted by Fuller's kid.



After the Jefferson County Supreme Court denied Fuller's dismissal request, he appealed to the Appellate Division, Fourth Department.

Fuller argued the case couldn't continue because he didn't know of his son's alleged "propensity to engage in violent or vicious conduct."

Interestingly, since it thought Fuller's knowledge of a prior fight between the youngsters wasn't enough to establish a duty or obligation to take appropriate preventative measures nor triggered liability, the AD4 opted to end the litigation.

Why was Fuller allowed to brush that off?

LENGTHY DURATION CLOGS CASE

In *Bryant v. Damiano*, Anne Bryant sued Charles Damiano for damages caused by the installation of an allegedly defective drainage system some 18 years prior to her lawsuit.

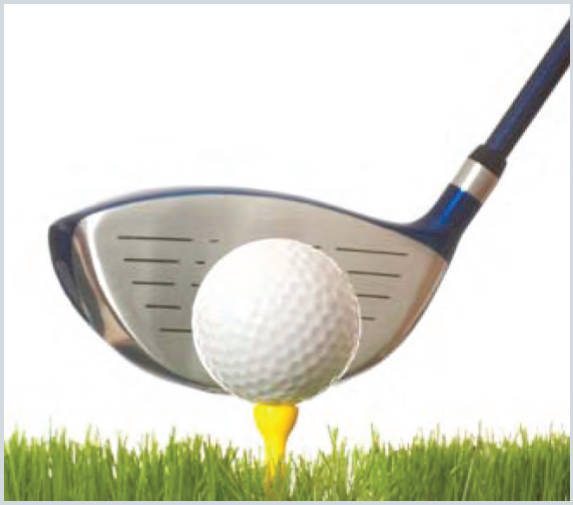
When the Rockland County Justice Court dismissed the case on "statute of limitations" grounds, Bryant appealed to the Appellate Term, Second Department.

The AT2 noted that a case against a contractor for "contract breach" or "fraud" must be filed within 6 years from the date the work was completed, or two years from the time Bryant learned of the fraud, or, with "reasonable diligence" could have uncovered the misconduct.

Bryant admitted that a year after Damiano completed the work, she detected a problem with the drain and hired someone to fix the system. Since she was aware of the defect for some 16 years, she was "time-barred" from seeking relief.

We're barred from flushing that out any further.

I'VE FALLEN AND I CAN'T GET UP!



In *Trenca v. Culeton*, Paulette Trenca was walking her dog around her property's backyard when she unexpectedly ended up at the bottom of a trench.

At the time, an adjoining site was undergoing construction and its foundation walls had yet to be backfilled, leaving a trench around the property's perimeter.

Trenca later filed suit against her neighbor, Robert Culeton (and others) for injuries she sustained.

When the Oswego County Supreme Court granted the defendants' request to dismiss the case, Trenca appealed to the Appellate Division, Fourth Department, which found Culeton breached a duty to keep his property reasonably safe.

The AD4 thought Culeton knew of the dangers and that his co-defendants failed to show they hadn't created the condition.

Trenca's inability to recall how she fell in the trench wasn't relevant, particularly in view of the defendants' inability to show they weren't negligent.

That's a hole in one for Trenca!

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