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NEWMAN FERRARA LLP

September/October 2010
Issue 58

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PARKS, RECREATION AND RECRUITMENT

After the Town of Southampton purchased a vacant ten-acre plot for "park and recreational purposes," it gave the land to the Village of Southampton, which decided to use a portion of the space as a gathering place for local laborers seeking work.

When several residents got an injunction from the Suffolk County Supreme Court stopping the park's use as "an outdoor hiring site," the Village argued on appeal that there was no local law which prohibited people from soliciting (lawful) employment.

Since an injunction is a "drastic remedy," which is only granted when there is a likelihood of "irreparable injury," and because the residents failed to show the possibility of that kind of harm, the Appellate Division, Second Department, reversed and vacated the equitable relief which had been granted by the court below.

Looks like there is a lot more work in store for those villagers.

RITA FITZSIMMONS HAD A FARM ...

Rita A. Fitzsimmons agreed to sell her farm to Barry B. Ouimet, but he was only prequalified for $120,000 of the $150,000 purchase price. When she later tried to get out of the deal, the Franklin County Supreme Court ordered the woman to proceed with the sale.

On appeal, the Appellate Division, Third Department, reversed because Barry hadn't shown he was "ready, willing, and able" to fulfill his contractual obligations. Apparently, the letter he received from his lender wasn't binding, and a mortgage commitment was subject to a formal application which apparently hadn't been completed.

Ee-eye, ee-eye, *OH*!

TIME EXPIRED?

The Terlephs owned land with no direct access to a public road, but were given a right-of-way over Madeline Bryer's property.

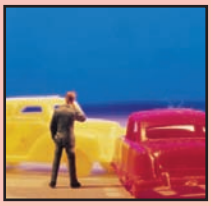
A prior owner improved that roadway and created a paved area for parking, which the Terlephs and others used. When Madeline sued to stop the parking, and the Rockland County Supreme Court found against her, she appealed.

The Appellate Division, Second Department, thought Madeline couldn't challenge her neighbors' use of the parking area unless there was an unreasonable interference with her ingress and egress.

Since there were unresolved questions as to whether her rights had been prejudiced, and whether there was another place for her neighbors to park, the appellate court reinstated the case and directed that the dispute proceed to trial.

They parked that right there.

NO INSURING THIS



After Ronald Popadich ran over 27 pedestrians with his car, his insurer, Commercial Insurance Company of Newark, N.J., sought a court order declaring that it owed no duty to defend or indemnify Popadich against any personal injury claims brought by his victims due to the intentional nature of the driver's misconduct.

After the New York County Supreme Court granted relief in the company's favor, an appeal to the Appellate Division, First Department, followed.

Since Popadich's deliberate acts weren't covered by the governing policy, the appellate court agreed that Commercial Insurance had no liability in this instance.

That's the rundown.

CUTS LIKE A KNIFE, BECAUSE IT IS

During the course of an altercation with his spouse, Czeslaw Betko reportedly jumped up from his seat at the kitchen table and threatened her with a knife.

After he was convicted of menacing in the third degree, attempted criminal possession of a weapon in the fourth degree, and harassment in the second degree, Betko filed an appeal with the Appellate Term, Second Department.

Upon its review of the record, the AT2 thought there was enough evidence to prove Betko's guilt of all three charges beyond a reasonable doubt. (Of course, it didn't help that his own wife testified against him.)

The table sure turned there.

FORCED WELLNESS

Tanyayette W., a patient at Mount Sinai Hospital from January 21 to February 3, 2003, claimed that she was falsely imprisoned during her stay and sued the institution.

When the New York County Supreme Court denied the hospital's request to dismiss the case, an appeal followed.

The Appellate Division, First Department, was of the view that the hospital had the right under New York State law -- Mental Hygiene Law § 9.39 -- to hold Tanyayette for involuntary care and treatment for up to 15 days, if doctors believed she suffered from a qualifying "mental illness."

In addition to failing to counter the medical diagnosis proffered, it appears that she had signed a "Seventy-Two Hour Retraction Letter," which indicated she had been voluntarily hospitalized.

Did anyone tell Tanyayette?

SHE WORKED HARD FOR HER MONEY

When Stella Arabov sued her former employer, DePinto Realty, over a real-estate commission, the Nassau County District Court only awarded her $1,111.32.

On appeal, the Appellate Term, Second Department, reviewed the evidence and concluded that "substantial justice" hadn't been done and that Stella was entitled to $4,003.90 (25% of $20,765.63, less $1,187.50).

The AT2 sure treated her right.

Knowledge Is Power Initiative Ltd. (KIP) is a not-for-profit entity formed for educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

KIP's goal is to cultivate, develop and advance citizens' awareness of their rights and obligations under the law. This hard-copy newsletter, which is distributed free of charge, is just one way KIP realizes its mission.

Ultimately, by utilizing legal information as an empowerment tool, we hope readers will develop a greater appreciation for our legal system's role and function.

NAVIGATING ROUGH WATERS

Bimini Boat Sales purchased a fishing boat from Luhrs Corporation -- a boat manufacturer -- for the purpose of reselling it to the general public, but the vessel supposedly suffered from several design flaws and "fundamental structural deficiencies" which required significant repair before it could be offered for sale.

After Bimini sued Luhrs for breach of the "implied warranties of merchantability and fitness for a particular purpose," the Suffolk County Supreme Court not only denied Bimini's request for relief in its favor but dismissed the case.

Since it thought Luhrs was liable for the defects, the Appellate Division, Second Department, reversed and reinstated the lawsuit.

There was no sinking that!

SWIM TEAM SHOW DOWN

After injuring her back, Adi Segal filed suit against St. John's University and her swim coach, John Skudin.

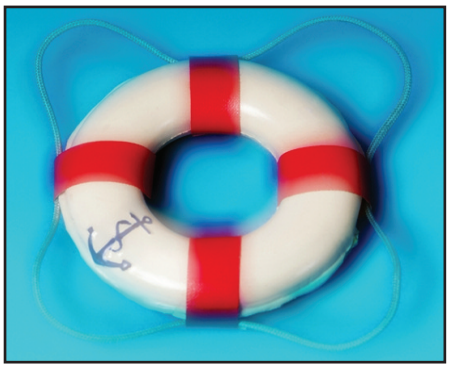
While Segal claimed that Skudin's training methods caused her harm, and that the school had negligently hired and supervised the guy, Skudin countered that Segal assumed the risk of injury by participating in the sport.

After the Queens County Supreme Court rejected the parties' requests for relief in their favor, they appealed.

While St. John's was let out because the wrong kind of case had been filed against the school, the Appellate Division, Second Department, thought that a trial was needed to resolve Skudin's liability.

Apparently, the swim coach's arguments didn't tread water?

RESCUE GONE BAD



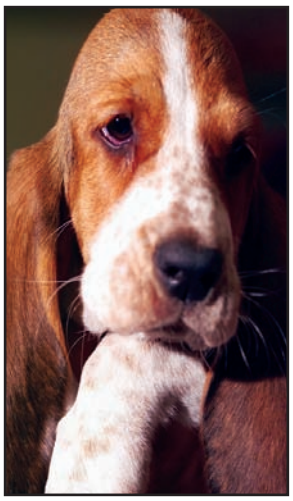
Officer Smith rescued an abandoned dog and held it at his precinct pending the ASPCA's arrival.

After seeing the dog in the station, Shannon offered to take the pooch home, where the animal viciously attacked her daughter. She later sued the City of New York (and others) based on her the child's injuries.

Because it disagreed with a Bronx County Supreme Court jury's verdict in Shannon's favor, the City appealed to the Appellate Division, First Department.

Since the evidence didn't show that Officer Smith knew, or should have known, of the dog's vicious propensities, and any "possessory rights" had been transferred to Shannon when she took the animal home, the AD1 reversed and dismissed the case.

She didn't have a dog's chance.



ALL NIGHT LONG

In memory of his deceased dad, Michael Basset threw a party at the Milton Fire House, where alcohol was served.

When a young attendee later got into an accident, Basset was charged with "unlawfully dealing with a child in the first degree." And, after that criminal case was dismissed, Basset sued the City of Rye for false arrest and malicious prosecution.

When the Westchester County Supreme Court denied its request to end the civil suit, the City appealed.

Since a municipality is liable for its employees' "unconstitutional actions," particularly when that conduct is "the result of [city] policy, practice or custom," and Basset had raised unresolved questions in that regard, the Appellate Division, Second Department, was of the view this was one ... cause for celebration.

CAUTION: NO WARNING

Mary Jane Stewart lost a thumb and two fingers when a machine made by Honeywell International (HI) unexpectedly double-cycled. When she later filed suit, she claimed the company failed to warn her of that possible danger.

After the New York County Supreme Court denied the company's dismissal request, HI appealed to the Appellate Division, First Department.

Because she had previously operated the device, and had known of the applicable risks and dangers, the AD1 was of the view any alleged "failure to warn" wasn't the cause of Stewart's injuries.

That left the poor lady HI & DRI.

DOOMES' DAY

While driving along a highway at 60 mph, a bus driver fell asleep at the wheel, causing the vehicle to veer off-road and roll over several times -- injuring all nineteen passengers aboard.

After Gloria Doomes (and two other passengers) sued the bus manufacturer, claiming that it had negligently lengthened the original chassis and failed to install seatbelts, the Bronx County Supreme Court awarded relief in Gloria's favor.

On appeal, the Appellate Division, First Department, thought the evidence didn't clearly establish the accident's cause and opted to dismiss the case. (It didn't help that a federal law -- the National Traffic and Motor Vehicle Safety Act of 1966 -- preempted a New York State law which required seat belts for buses.)

Was Gloria's case Doomsed?

SWING LOEWS

E. Keller, an in-house attorney for Loews Corporation, filed suit alleging that he had been wrongfully terminated and that he was a victim of religious discrimination.

Loews Corporation countered that Keller breached a fiduciary duty by disclosing confidential company information in his complaint.

After the New York County Supreme Court dismissed Loews' counterclaim, on the grounds that Keller owed no duty to his former employer, the company appealed.

Since Keller's obligation to protect his client's confidences and secrets continued even after he was fired, the Appellate Division, First Department, reinstated the counterclaim.

Talk about highs and Loews!

BEING THERE

After 521 East 5th LLC filed a nonprimary residence holdover case, the New York County Civil Court dismissed the proceeding because the judge thought the landlord hadn't established that the tenant, Daniel Brandon, wasn't really living in the unit.

On appeal, the Appellate Term, First Department, sent the case back for a new trial -- particularly because the owner had provided the court with surveillance tapes showing Brandon infrequently visited the apartment and there were documents which established that the guy received his mail in the State of Washington. (The building's superintendent also testified that he rarely saw Brandon and that others actually occupied the unit.)

Someone likes to watch.

CLAUSE GIVES PAUSE

Andrew Buxton wanted to buy a house from Barbara Streany but backed out of the contract when he wasn't able to get a mortgage.

When Streany refused to return the downpayment, Buxton sued and the Westchester County Supreme Court granted relief in his favor.

On appeal, Streany argued that Buxton didn't really try to get a mortgage and that the governing provisions, which supposedly allowed Buxton to cancel if a loan wasn't secured, weren't clear.

The Appellate Division, Second Department, thought the agreement's language wasn't ambiguous and that Streany's accusations -- as to Buxton's ulterior motives for wanting out of the deal -- couldn't be substantiated and weren't relevant since the guy made a good-faith effort to get the money.

So, there's no questioning a man's faith?

IN THE BLACK?

After slipping and falling in the William Black Medical Research Building, Daniel Tam sued Presbyterian Hospital believing the latter owned or controlled the property.

Since Presbyterian showed that the property was actually owned by Columbia University, the New York County Supreme Court dismissed the case. (Interestingly, Tam had tried to sue Columbia but missed the governing time period or "statute of limitations.")

Because Presbyterian didn't own the land on which the research building was situated, the Appellate Division, First Department, affirmed the dismissal.

Why didn't Columbia own up to that?

LOVE AND MARRIAGE

When Joseph Rosenzweig sought to foreclose a mortgage he had given to Radiah Givens -- who later became his wife -- Givens countered that Rosenzweig had secured the mortgage by way of fraud, overreaching, and, by exploiting a fiduciary relationship he had with her.

Givens claimed that in order to facilitate the condo's purchase, she was asked to sign a mortgage document which identified Rosenzweig as the "lender."

Three years into their marriage, when Givens discovered her husband was hitched to someone else, the guy demanded payment of that "loan."

After the Appellate Division, First Department, rebuffed Rosenzweig's request for relief in his favor, he headed up to the Court of Appeals, which shared the view that a trial was warranted.

This I tell you brother ....

WRONG CLAIM, WRONG TIME

Michael Picozzi III wanted to buy property from Michael Marcantonio.

Although the parties' contract of sale reflected that a downpayment had been received, that apparently wasn't the case and the funds were supposedly deposited at "a later date."

After the house was sold, Marcantonio sued the buyer, and the law firm that processed the transaction, for fraud.

When the Nassau County Supreme Court dismissed the case, the matter ended up before the Appellate Division, Second Department.

While it thought Marcantonio should have brought a "breach of contract" rather than fraud case, since the deed had already been delivered, the AD2 was of the view any possible claim had been "extinguished" by the transfer and that the dismissal needed to stand.

That grief was not crowned with consolation.

DEEP-FRIED DISASTER

Edith Lee and her fourteen-month old daughter, Kiera Broderick, attended a Fourth of July party where a deep-fat turkey fryer was in use.

When some 20 gallons of boiling oil were poured down a storm drain, and came into contact with water from a running hose, pockets of hot steam and fiery oil exploded into the air, burning Lee and causing serious injuries to Kiera.

After Lee sued the building's manager, and the party's hosts, the Bronx County Supreme Court, granted the defendants' request to dismiss the dispute.

On appeal, the Appellate Division, First Department, reinstated the case because there were unresolved questions as to the fryer's use, whether the defendants had breached a duty to keep the premises safe, and, whether their actions had caused the injuries.

They weren't about to put that on the back burner.

REAL SPEC GOT FAKE MORTGAGE

Livingston Mandel Deans, his father (Byron), and his second wife (Sharon), each shared a one-third interest in a Queens property.

After his death in 2001, Livingston's property went to his wife Sharon and to his two surviving children. But in 2003, Sharon supposedly forged her step-daughter's signature onto a deed and -- using documents executed by an imposter claiming to be Byron -- obtained a $370,000 mortgage from Real Spec Ventures, LLC.

After the Queens County Surrogate's Court found the deed and mortgage fraudulent and cancelled the recording of those documents, Real Spec appealed.

Because the Surrogate's Court lacked the power to decide "independent matters involving controversies between living persons," the Appellate Division, Second Department, thought the mortgage's cancellation (in its entirety) was an error.

Who reported that to the Deans?

WHAT'S A DOLLAR OR EIGHT?

361 West 121st Housing Dev. Fund Corp. (HDFC) entered into an agreement with Liza and Tony Frazier, wherein the tenants agreed to pay $9,384.09 in maintenance arrears, together with the HDFC's legal fees and future maintenance charges as they came due and payable.

When the Fraziers' first payment was $8.13 short, and five days late, the HDFC wanted to have the tenants evicted because of their breach of the governing contract.

After the New York County Civil Court denied the Fraziers' request to stop their eviction, the couple appealed. The Appellate Term, First Department, thought this wasn't the type of default which warranted removing the tenants from their home. (Their non-compliance wasn't seen as a material breach of the stipulation.)

Who got short-changed there?

TAKING A BITE OUT OF CRIME

After he supposedly tried to rob the place, Adrian Williams was tackled by the bank's manager.

Although he attempted to escape (by elbowing, scratching, and biting), several people came to the manager's aid, and Williams was subdued until police arrived. (The guy was later convicted of robbery in the second degree and grand larceny in the fourth degree by the Nassau County Supreme Court.)

On appeal, Williams claimed he was only trying to defend himself and that any injury the manager incurred was in self defense, wasn't due to the theft of property, and, that prosecutors had failed to prove that a "robbery" had been committed.

Because he was still holding onto the stolen cash during the scuffle, the Appellate Division, Second Department, thought the jury could logically infer that Williams' primary goal was to escape with the loot, not merely to fend off the manager.

We're wondering if that banker worked for Chase?

HOW SHAYDIE WAS THIS?

When Shaydie Cammann sued her former employer, Prudential World Homes Realty, on an unpaid brokerage commission, the company claimed that its policies and procedures obligated her to assist the company with the collection of unpaid commissions. (According to that policy, if Cammann failed to cooperate, she forfeited any right to the money.)

After the Putnam County Justice Court granted Prudential's request to dismiss the case, Shaydie appealed to the Appellate Term, Second Department, which reversed.

Apparently, Prudential failed to offer any evidence which established that Shaydie knew of the policy when she entered into her employment contract. And because that issue wasn't resolvable based on the papers before it, the AT2 thought the lower court's dismissal of that Shaydie claim had been premature.

Cammann!!!

HE WHO WOULD CLIMB THE LADDER ...

Long after a worker fell off a ladder and was hospitalized, the Board of Managers of the 1235 Park Condominium sent a notice of claim to its insurance carrier, Clermont Specialty Managers.

When coverage was disclaimed, because the Condo hadn't given timely notification, a lawsuit was filed and the New York County Supreme Court ended up siding with the insurer.

While the Condo conceded its notice was a bit late, its excuse was that it didn't believe a claim would be filed. (The Board supposedly contacted the worker's employer, was told the guy hadn't sustained "serious injuries," and, that he was expected to report to work the next day.)

On appeal, the Appellate Division, First Department, didn't think it was reasonable for the Condo to assume there wasn't going to be a claim.

In other words, they should've taken steps to avoid that fall.

NOT SAVED BY THE BELL?

After eleven-year-old William Robinson was shot by an unknown assailant with a BB gun, his parents sued Sacred Heart School for failing to provide a safe environment.

Since the school had door buzzers, alarms, cameras, and, its personnel had been instructed to seal all doors and permit entry by buzzer only, the Westchester County Supreme Court granted the school's dismissal request.

On appeal, the Appellate Division, Second Department, agreed that the case couldn't continue since "minimal security measures" had been implemented. (Apparently, the appellate court didn't think the incident was foreseeable or that liability had been triggered in this instance.)

Sacre bleu!

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RETURN TO SENDAR!

Sendar Development Company hired several independent contractors to add five floors to an Upper West Side apartment building.

In October of 2002, soon after that project's completion, the windows leaked and hallway tiles began to crack. Some two years later, Kevin Sweeney was re-hired to inspect the areas in question and he concluded that there was no structural basis for the conditions in question.

In 2007, after the building had a flood, Sendar sued Sweeney (and others) for breach of contract and negligence.

When the New York County Supreme Court denied Sweeney's request to be let out of the case, he appealed.

Since he showed that the 2004 inspection was unrelated to the original scope of work (completed in 2002), nor part of any ongoing services, and because a three-year timeframe (or "statute of limitations") applied, the Appellate Division, First Department, found that Sendar's suit against Sweeney hadn't been timely filed.

There's no developing that any further.

If you would like to attend one of our free continuing legal education classes, please contact Jarred I. Kassenoff at 212-619-5400.