KNOWLEDGE IS POWER

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Inside this issue

REALLY SUPER?

Vivian Kleinerman was in the process of renovating her apartment when her co-op directed her to stop the work (because it hadn't been approved).

Kleinerman countered that the cooperative's decision was in retaliation for her refusal to pay off the building super, who had been demanding money.

Because they thought the board might have breached a fiduciary duty owed to Kleinerman--since the co-op may have known of its employee's misconduct and may have assisted the alleged "extortion" by issuing the stop-work order--both the New York County Supreme Court and the Appellate Division, First Department, declined to dismiss the case.

Was that building super cooperative?

DEAD WOMAN SIGNING

When the First National Bank of Nevada started a foreclosure case, the Administratix of the Estate of Kathy Briggs challenged the validity of the debt and the underlying transaction.

After the Queens County Supreme Court found in the bank's favor, the Appellate Division, Second Department, reversed, finding unresolved issues which warranted a formal hearing or trial.

Apparently, the deed was executed by Alfred St. Dic, who had supposedly been given a power of attorney by Briggs on December 18, 2003. The problem was that Briggs had died a month earlier.

(If the signature is a forgery, and the transaction is found to be invalid, the foreclosure proceeding could end up getting thrown out.)

Holy Houdini!

WHAT A WASTE!

John Gronski filed a personal-injury case against Monroe County after he was hit by a one-ton bale of corrugated material while working at a recycling plant operated by Metro Waste Paper.

When the County's request to dismiss the case was granted, Gronski appealed. But since the County had given control of the recycling plant to Metro, and had also contracted away any repair or maintenance responsibilities, the Appellate Division, Fourth Department, agreed that as an "out-of-possession landlord," Monroe wasn't liable for what had transpired.

Did the poor guy get boxed in?

MOTHERS ON TRIAL

Annette Lehr was shopping at a clothing store--owned by Mothers Work, Inc.--when she tripped and fell on a clothing rack.

Claiming she had complained about the racks' placement, and all the clothing strewn about, Lehr sued, alleging that Mothers had created the dangerous condition or routinely ignored it. When the New York County Supreme Court denied Mothers's dismissal request, an appeal followed.

Since there were unresolved questions as to the company's placement of the racks, and whether it had notice of the problem, the Appellate Division, First Department, agreed that the matter needed to proceed to trial.

Sorry, but would you like someone dissing your Mothers?

WAS SHE WRONGED?

Maria D. received prenatal care from Drs. Tessler and Maffei at the Women's Medical Association. After an ultrasound test revealed a brain abnormality, Maria was referred to Dr. Gallousis at the Northern Westchester Hospital Center for additional testing. (Gallousis later confirmed the diagnosis.)

After delivering her child, Maria filed a medical malpractice claim--on behalf of herself and her infant, to recover the costs of future medical care--based on the lack of "informed consent," and the doctors' failure to advise her of the possibility of ending the pregnancy. When the Westchester County Supreme Court denied the doctors' request to throw the case out, they appealed.

In addition to there being no claim for "wrongful life," the Appellate Division, Second Department, didn't think the doctors were guilty of any wrongdoing, since New York State law prohibits a pregnancy's termination after the 24th week unless a woman's life is at risk. (In this instance, by the time the congenital defect was discovered, Maria was well beyond her 25th week.)

And because she hadn't alleged there had been an unauthorized "invasion or disruption of the integrity of the body," the AD2 also didn't think her "lack of informed consent" claim could survive.

With or without your consent…we're ending it there.

DECEIVING

After she was confronted by a neighbor, a police officer allegedly told Candice Brown not to be concerned and that he would "take care" of the situation.

When she was later stabbed in the eye by that same neighbor, Brown sued the City of New York for failure to provide adequate police protection. After the Kings County Supreme Court dismissed her case, Brown appealed.

Generally, the City isn't liable for lapses in police protection unless there is a "special relationship" with the injured party. In this case, the Appellate Division, Second Department, thought the officer's statements were nothing more than "vague and ambiguous" assurances.

In the AD2's view, nothing the officer said or did lulled Brown into a false sense of security--particularly since she admitted, during the course of pre-trial questioning, that she continued to feel unsafe.

Brown out?

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 our readers will develop a greater appreciation for the legal system's role and function.

AND HERE'S TO YOU ...

During a search of Jacqueline Robinson's apartment, officers uncovered "209 ziplock bags of crack cocaine, numerous empty ziplock bags and a digital scale."

When an eviction proceeding was later started against her, the arresting officer testified that the "quantity and packaging" were consistent with narcotics trafficking.

After the New York County Civil Court found that the apartment had been used for an "illegal purpose," and that Robinson knew or should have known what was going on, the woman appealed from the judgment ordering her eviction.

In view of the "amount and nature" of the contraband recovered, the Appellate Term, First Department, agreed that Robinson needed to go. (Interestingly, because the District Attorney's office was seeking the eviction, the appellate court thought no predicate termination notice was required.)

Hey, hey, hey ... hey, hey, hey.

NOT INTO BEING MOBILE

Maria Santos gave a $6,000 deposit when she agreed to buy a mobile home.

Even though her contract provided that she would later pay an additional $27,000, Santos backed out of the deal and sued to get her downpayment back.

Although the Suffolk County District Court wasn't receptive to her claim, the Appellate Term, Second Department, viewed the case a lot more favorably.

Since a state law--the Uniform Commercial Code--provides that a mobile-home buyer can only forfeit up to $500 when there's a contract breach, the AT2 awarded Santos a $5,500 refund.

You try trashing that.

ANCHOR AWAY

Riverhead PGC owned a shopping center which had a Wal-Mart as an anchor tenant.

When the Town of Riverhead approved the construction of a Wal-Mart Supercenter some two miles west of the existing property, PGC attacked the ordinance--by way of a special proceeding--claiming the new development would cause PGC "direct injury" and "economic harm."

After the Suffolk County Supreme Court found in PGC's favor, the Town appealed.

Since economic harm--due to business competition--wasn't protected by law, and the property wasn't close enough to the new site to show an "injury-in-fact," the Appellate Division, Second Department, reversed and dismissed the case. (It also thought PGC's claims were "speculative" in nature.)

It really is a Wal-Mart world.

WHAT ABOUT OBAMA?

After Val Thomas was convicted of assault, criminal mischief and resisting arrest, he was sentenced to four and a half years in prison and given five years of post-release supervision.

On appeal, Thomas claimed the County Court of Ulster County had wrongfully denied him the right to represent himself at trial.

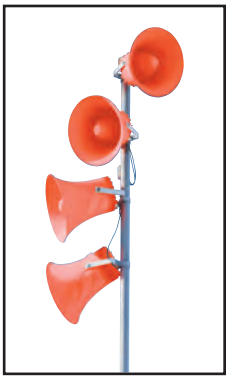
While his request to act as his own counsel was timely made, the Appellate Division, Third Department, thought Thomas's mental state rendered him incapable of making an informed decision.

He initially chose to proceed *pro se* because his assigned attorney wouldn't acknowledge him as the "legitimate King of the United States," or as "Almighty God." (Moreover, Thomas believed he was immune from criminal liability due to a treaty known as "The General Agreement to End World War III.")

The AD3 also noted that the three people Thomas wanted as "standby counsel"--Hillary Clinton, Sandra Day O'Connor, and Nevada State District Judge Jacqueline Glass--were otherwise engaged.

Nothing wrong with reaching for the stars.

OUT OF THE MOUTHS OF BABES?



Because it found that William A. had sexually abused his ten-year old daughter, Lauryn H., the Kings County Family Court granted custody of the kid to her mom and also removed the other child living with William.

On appeal, the Appellate Division, Second Department, thought Lauryn's testimony was reliable given her detailed account of the abuse and her unwavering responses on cross-examination.

The evidence of sexual abuse was strong enough to establish that William suffered from "impaired parental judgment" and was an unfit parent when it came to the other youngster in his care.

Hearest thou what these say?

JUST LIKE EVERY NIGHT HAS ITS DAWN

After he was convicted of burglary in the second degree, Vincent Rose challenged the jury-selection process.

Apparently, when a prospective juror was asked if he had ever been the victim of a crime, the man indicated he had once found his house burglarized and his mother and a neighbor bound and gagged. When asked if he could be fair and impartial despite that experience, the juror replied, "I can try. I really don't know." Satisfied with that response, the Westchester County Court denied Rose's challenge to that individual's jury service.

On appeal, the Appellate Division, Second Department, reversed Rose's conviction and ordered a new trial. In the AD2's view, the juror needed to exhibit an "absolute belief" that he could be fair and impartial. Failing that, the guy should have been removed, since his response had been so equivocal.

Every Rose has its thorn.

... TRIX ARE FOR KIDS

Matthew O'Hare was pulled over because an air freshener was observed hanging from his rearview mirror, and was arrested after a background check revealed his license was suspended. And as luck would have it, two unlicensed guns were found when his car was searched.

After the Suffolk County Court convicted him of two counts of criminal possession of a weapon, O'Hare challenged the legality of the officers' conduct. Although cops are allowed to stop a vehicle when a traffic violation has occurred, the Appellate Division, Second Department, didn't think there was a reasonable basis to go after O'Hare--particularly in light of a forensic safety engineer's testimony that the air freshener wasn't blocking the driver's view of the road and no violation of any traffic law had been committed.

That one was won by O'Hare.

NO KNIGHT IN SHINING ARMOR?

Ashley Realty Corp. filed a holdover proceeding against Andrew Knight, claiming the guy didn't really live in his rent-regulated apartment. Interestingly, Knight never submitted an answer, or appeared in court, and a default judgment was entered against him.

Instead of trying to vacate that default, Knight asked for the case's dismissal, arguing that a notice he received was defective--because the signature thereon was illegible, and there was no indication who the signer was.

After the New York County Civil Court dismissed the case, the Appellate Term, First Department, reversed and reinstated the matter. While a notice in a landlord-tenant case should be signed by the landlord or an agent identified in the lease, when the tenant knows that a signer has the authority to act, that document can survive attack.

Since Knight dealt with the agent on several occasions, and was familiar with the scribbled signature (because it appeared on a prior renewal lease), both the Appellate Term, and the Appellate Division, First Department, thought the notice could be used to vanquish the fellow's tenancy.

That Knight won the battle, but lost the war.

CEASE AND DESIST

When Nancy Cease filed for divorce, her husband, Daniel, claimed the house wasn't subject to equitable distribution.

Although Daniel's father had bought the home back in 1984, each month Nancy wrote her father-in-law a check which equaled the mortgage payment.

In 2000, Daniel supposedly paid off the balance of the mortgage with some inheritance money he didn't tell Nancy about. And she kept writing checks, which her mother-in-law deposited into a "secret" account.

After the Ulster County Supreme Court decided to treat the house as "marital property," Daniel appealed.

Because testimony established that the house had been intended for both Daniel and Nancy, and her husband's words and deeds led her to believe she had an interest in the property, the Appellate Division, Third Department, affirmed.

Did someone bet the house on that?

HOW RUDE!

When they responded to a call involving a "dispute with a knife," officers found two men pointing at Carlos Reyes.

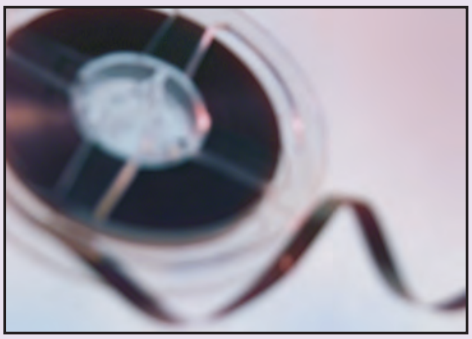
Without asking for any information, the cops pursued Reyes and eventually captured him. Since he was carrying a gravity knife and a gun replica, he was arrested. At his trial, Reyes wanted to prevent the introduction of the recovered items and the statements made while in custody, claiming there hadn't been a sufficent legal basis, or "probable cause," to arrest him. After the New York County Supreme Court denied that request, and he was convicted of attempted robbery in the third degree, Reyes appealed.

Since the arresting officers lacked a perpetrator's description, and failed to interview witnesses at the scene (or ask why people were pointing at Reyes), the Appellate Division, First Department, thought the apprehension lacked a "reasonable" basis.

(And because flight alone wasn't enough to justify the pursuit, the weapons and statements weren't admissible.)

There was no fingering him.

TOO OLD FOR THIS



While he was allegedly making sexual passes at a client, 76-year-old attorney A. Isaac was recorded boasting about his ability to influence appellate judges, and described one of the jurists in a disparaging way.

After the recordings were forwarded to the New York Departmental Disciplinary Committee, a referee found Isaac guilty of sexual misconduct, and of having made inappropriate comments about the court, and a two-year suspension and public censure were recommended.

On its review, the Committee agreed with the sexual-misconduct recommendations, but dismissed the charge relating to Isaac's judge-related comments, as they had been privately uttered.

When the Appellate Division, First Department, got the case, it agreed that Isaac's comments about the judges were private in nature, and therefore the related charge had been properly dismissed. It also thought, given Isaac's advanced age, that a six-month suspension from practice was a more appropriate penalty.

See, old age is not total misery ....

WANNA PLAY?

Second grader Josh Tanenbaum filed a negligence case against the Minnesauke Elementary School (and others) after he was pushed by a classmate and fell and hit his face on a cafeteria bench. (The Tanenbaums claimed the school failed to properly supervise the youngsters.)

When the Suffolk County Supreme Court dismissed their case, the Tanenbaums appealed.

Because a cafeteria monitor had been present, warned the kids to curb their running, and, was only "one or two seconds away" when the accident occurred, the Appellate Division, Second Department, thought the children had been appropriately supervised and that no liability for the incident had been triggered.

Hidey-ho!

MM....

Midisland Medical sued for the value of services provided to two of New York Mutual Insurance Company's policyholders.

Under an agreement reached in court, Midisland was required to turn over certain evidence it had about its claims, or the company wouldn't be able to use that information at trial.

Because it never received the documentation, NY Mutual sought to have the case thrown out. And when the Queens County Civil Court granted that request, Midisland appealed.

Absent a "reasonable excuse" for Midisland's failure to produce the information, the Appellate Term, Second Department, thought the dismissal was the way to go.

There was no middle ground for Midisland.

TAKING CUSTODY

After a nonjury trial, the New York County Supreme Court limited T. Torand's access to his three teenage kids to three phone calls a week and three hours of supervised visits per month. And if the youngsters refused to see him, they couldn't be forced to do so. (The mother didn't have to compel a visit if there was "forceful opposition.")

Because it thought a visitation order conditioned on the youngsters' "desires" undermined the father's rights, the Appellate Division, First Department, reversed.

On remand, it also recommended that the Family Court appoint an attorney for the kids and that they be interviewed.

The AD1 sure took charge of that.

STORMESY WEATHER

Raymond Stormes sued United Water New York, the owner and operator of a nearby dam and reservoir, claiming the company was responsible for the flooding of his property back in 2007.

Stormes alleged that United had negligently operated the dam because excess water hadn't been released before some rainy weather hit the area.

When the Rockland County Supreme Court rejected United's claim that it had no obligation to prevent, control, or mitigate the flood, the utility appealed.

While courts won't usually ascribe liability when nature runs its course, and a dam isn't designed for flood-control purposes, because United didn't show that the damage would have occurred in any event, the AD2 thought the case needed to flow ... freely.

Dam!

THE GITTINS NOT GOOD

Ryan Gittins, hired to do carpentry work on Danny Levy's home, tripped and fell off the structure's third floor and hit a fence.

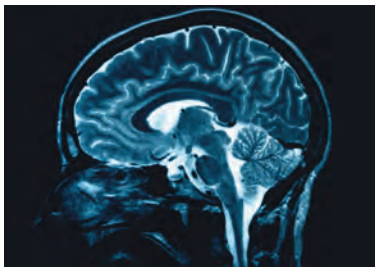
When the Kings County Supreme Court refused to dismiss the personal-injury case brought against him, the homeowner appealed.

Since Levy wasn't responsible for what occurred--because he didn't control the carpenter's work--the Appellate Division, Second Department, reversed and threw the case out.

(Although Levy spoke to Gittins's supervisors, Gittins never took any instructions from the homeowner. In fact, the two men never spoke.)

Basically that Levy was dry.

WOULD YOU BELIEVE?



Cynette Wilson sued Corestaff Services L.P.--a temporary-employment agency--after someone supposedly made a "retaliatory statement" about her.

While assigned to an investment bank, Wilson allegedly received a nude photo from a co-worker and reported the incident.

A witness claimed that he was told not to give Wilson work "because she complained of sexual harassment." And, in order to enhance his credibility, Wilson wanted an expert to testify that a Functional Magnetic Resonance Imaging test showed "to a very high probability" that the witness's testimony was truthful.

Since credibility determinations are left to the judge or jury, the Kings County Supreme Court granted the defendants' request to exclude that particular expert testimony.

Wasn't that a no-brainer?

OH, HEAVENS!

Celestina Agosto fell on an unfinished lobby floor at her workplace and later sued the building's owner, and its independent contractor, A.R. Equipment, LLC, for creating a hazardous condition.

Because it had been hired by the owner to remove the lobby floor tiles, the Bronx County Supreme Court denied A.R.'s request to dismiss the case. On appeal, the Appellate Division, First Department, reversed.

A.R.'s contract with the owner was limited to the removal of the tiles. Since it had no responsibility to do any other work, once the company's contractual obligations had been fulfilled, the AD1 was of the view A.R. had no duty to protect the lady from any existing hazards.

That was far from celestial for Celestina.

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NO UNIVERSAL LIABILITY

Remy K. Smith, better known as singer/hip-hop artist "Remy Ma," was implicated and eventually found guilty in the shooting of Makeda Barnes-Joseph outside a Manhattan nightclub back on July 14, 2007. (Remy Ma supposedly had violent anti-social propensities.)

Makeda sued Remy Ma's recording label--Universal Music Group--arguing the company created and promoted Remy Ma's aggressive character for profit, and didn't do enough to stop the misconduct.

After the Bronx County Supreme Court granted Universal's dismissal request, an appeal followed.

Since the case was about negligent hiring, and Remy Ma was never Universal's employee, the Appellate Division, First Department, agreed that dismissal was appropriate.

(The fact that Remy Ma was "terminated" nine months before the shooting also worked to relieve the company of any liability.)

Only Remy.

COME UNLOCK OUR VIDEO VAULT!

KIP'S new website--www.kipny.com--features a series of videos on an array of topics.

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