Nov./Dec. 2009
Issue 54

Inside this issue

THE STRAWBERRY SLIDE?

Jean Kramer sued a catering hall, owned and operated by SBR&C, for injuries she sustained while attending a retirement party.

During the cocktail hour, a table full of strawberries was placed on the dance floor. Some 45 minutes after the fruit was removed, Kramer fell while dancing. (At the time of her fall, she supposedly noticed crushed strawberries on the floor and on her shoe.)

SBR&C asked the Richmond County Supreme Court to dismiss the case because the evidence established the company neither caused the "dangerous" condition nor had actual or constructive notice of its existence. (To establish constructive notice, a defect must be visible and apparent and must exist for a sufficient period of time before the accident to allow for its discovery and correction.)

While the Supreme Court initially granted the dismissal request, it later reconsidered its determination and allowed the case to continue.

On appeal, the Appellate Division, Second Department, opted to squash the litigation.

Kramer's deposition testimony, and that of her husband's, reinforced that no one saw any fruit fall to the floor nor complained of any possible hazards.

In other words, it seems like Kramer got herself into a real jam.

BATTING 1000?

John Demelio sued Playmakers, Inc., for injuries sustained while at the Brooklyn Indoor Sports Center.

John was practicing his swing when a ball ricocheted off a metal pole and hit his eye. He later claimed Playmakers enhanced the risk of injury by failing to pad the metal pole.

After the Kings County Supreme Court refused to dismiss the case, Playmakers appealed to the Appellate Division, Second Department.

Since Playmakers failed to show that ricocheting baseballs were an "inherent risk" of the sport, the AD2 thought that the denial of Playmaker's dismissal request was appropriate under the circumstances.

That's no way to play ball.

WE DIDN'T START THE FIRE

Seeking to recover monies paid on an insurance claim, the Greenwich Insurance Company sued Volunteers of America-Greater N.Y., Inc. (VOA) claiming VOA's subtenant caused the building to go ablaze.

After the New York County Supreme Court granted VOA's request to end the case, an appeal to the Appellate Division, First Department, followed.

Since VOA's lease provided that it was only obligated to pay for fire damage it caused, and its subtenant was supposedly responsible for the fire, the AD1 concluded VOA wasn't liable for the sums sought.

VOA wasn't about to volunteer anything there.

WHEN YOU AIN'T GOT NO MONEY, YOU GOTTA GET AN ATTITUDE

Pamela Pryor sued the City of New York and Judlau Contracting, Inc. after she tripped and fell over a sidewalk bollard's exposed base plate.

When the New York County Supreme Court dismissed the case against Judlau, Pryor appealed to the Appellate Division, First Department.

The AD1 thought Judlau established that it hadn't performed construction work "at or near the area" where Pryor had fallen and that the testimony of Pryor's expert -- as to the accident's cause -- was "speculative and without support in the record."

Some trip.

RES-IPSA-WATCH-THOSE-STAIRS!

Donald Champagne, a plumber, was hired by Linda Peck to do some basement repair work. As he descended the stairs, the top tread collapsed and down he fell.

After Champagne filed a personal-injury suit, Linda asked the Oswego County Supreme Court to dismiss his case. When that request was granted, Champagne appealed to the Appellate Division, Fourth Department.

Based on its review of photographs of the scene, the AD4 thought there were unresolved questions as to whether Linda "created or had constructive notice" of the condition and was liable for Champagne's fall.

Guess who popped one open there?

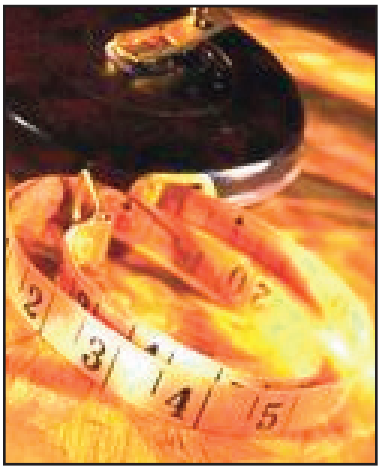
MUDDY WATERS

Diane Schweighofer sued Joe and Lucielle Straub to recover the balance of a rent deposit made on a single-family home.

After a trial, the Justice Court of the Town of Chester dismissed the case. Schweighofer wasn't able to prove she couldn't move into the house because of the water's impotability and the Straubs -- who lost one and a half months' rent and advertising costs in order to find a new tenant -- showed they were really the ones who had been damaged.

On appeal, the Appellate Term, Second Department, deferred to the Justice Court's credibility determinations and affirmed the outcome, even though there was no certificate of occupancy for the structure.

"You can't lose what you ain't never had."



DID SHE HAVE SUBSTANTIAL FRONTAGE?

Juliette Espersen thought she was selling 83 feet of lake frontage to Michael R. Nowicki.

When a survey later revealed the property consisted of 114.7 feet of lake frontage, Juliette filed suit seeking to rescind the deal based on "mutual mistake."

After the Chautauqua County Supreme Court granted Michael's request to force the sale, Juliette appealed to the Appellate Division, Fourth Division.

In order for a contract to be rescinded based on "mutual mistake," the error must have existed at the time of the contract's making and be so substantial in nature that there couldn't have been a "meeting of the minds."

While Juliette claimed that the amount of lake frontage was an important part of the deal, since she didn't obtain a survey and hadn't specified a per-foot price for the frontage, the AD4 refused to release her.

Wherefore art thou Juliette?

A GUARANTY ONLY GOES SO FAR

After Lo-Ho LLC brought a nonpayment proceeding and was awarded $24,995.91 against its commercial tenant, the landlord sued Santiago Batista (the tenant's cousin and guarantor) for all remaining lease obligations through March 31, 2010.

While Batista had agreed to guaranty the performance of the original five-year lease (which ended on March 31, 2005), Lo-Ho and the tenant later extended the lease for an additional 5-year term, without Batista's consent.

After the New York County Supreme Court dismissed Lo-Ho's claims against the guarantor -- because the "extension" was really a new lease which relieved Batista of his obligations under the Guaranty -- the landlord appealed to the Appellate Division, First Department.

While the guaranty applied to "any renewal, change or extension," the AD1 thought the parties had "substantially and impermissibly changed [Batista's] obligations," "impermissibly increased" his risk, and had thus rendered the guaranty unenforceable.

That was a no-go for Lo-Ho.

DOG-EAT-DOG WORLD

Stephen Myers and his son were bike riding when two dogs ran into the road.

While Myers didn't remember what happened, his son, who was about five yards behind him, testified that the animals belonged to the MacCrea family.

After the Allegany Supreme Court granted the MacCreas' request to dismiss the negligence case brought again them, Myers appealed to the Appellate Division, Fourth Department, which affirmed the outcome.

While Myers established the dogs were permitted to run loose and that they were "trouble" when together, that didn't prove the animals had a history of interfering with traffic. Myers was also unable to rebut the family's argument that it didn't know that either of the dogs would run into the street or assault passersby.

Bet that dogged Myers.

NOT QUITE IN THE BAG

In *People v. Alston*, J. Alston was charged with committing seven different robberies.

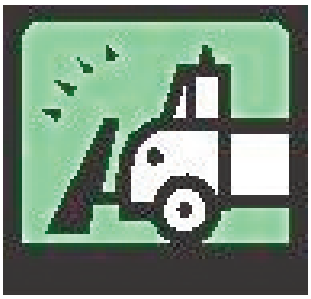
Witnesses to four of those robberies testified that a masked man approached them at gunpoint and placed their belongings in a black bag.

Prosecutors were also able to show that the same man with a black bag -- Alston unmasked -- was caught shoplifting two cans of Red Bull.

When he was convicted of first degree robbery, Alston appealed to the Appellate Division, Second Department.

The AD2 thought Alston's use of the black bag had been properly considered because it showed a "unique modus operandi" that was relevant to identifying the perpetrator of the crimes.

You try bagging that!



LA VIDA LOCA

In *Vida v. Yorktown Highway Dept.*, Antonio Vida sued to recover $1,300 when his truck and fence were supposedly damaged by a Yorktown Highway Department snow plow.

Since Vida wasn't present when the incident took place and he didn't have any evidence supporting his claim, the Justice Court of the Town of Cortlandt Manor dismissed the case.

Because it wasn't clear who damaged Vida's property, the Appellate Term, Second Department, refused to disturb that outcome on appeal.

Was Vida fenced in?
Come on!

BRINGING DOWN THE HOUSE

Grand Street Properties, LLC, wanted to evict Katie and Matthew Caggiano on "nuisance" grounds.

Apparently, Katie's adult son -- Matthew -- exhibited "disruptive and antisocial behavior."

After the New York County Civil Court sided with Grand Street and ordered the tenants' eviction, the Appellate Term, First Department, agreed that evicting the Caggianos was the only way to improve living conditions for the building's residents and staff.

Bet the remaining tenants thought that was just Grand.

A BLOCKBUSTER DAY

Blockbuster and Citibank were sued after Lucia Ortiz slipped and fell on a sidewalk, which abutted the companies' parking lot.

Ortiz claimed JSMS Corporation -- a snow removal contractor hired by yet another party -- had made the existing snow and ice conditions worse.

After the Bronx County Supreme Court refused to grant the defendants' dismissal request, they appealed to the Appellate Division, First Department.

Since Citibank and Blockbuster hadn't removed the snow, nor controlled the contractor's work, and because there was no proof JSMS "created or exacerbated" a dangerous condition that led to Ortiz's fall, the AD1 thought the case needed to melt away.

There's no rewinding that.

THE GUY HAD NO APPEAL

In *Commissioners of the State Ins. Fund v. Ramos*, Manuel Ramos claimed he didn't have to pay what he owed to the State Insurance Fund because of "laches" -- that is, the Fund had waited too long to enforce a judgment it got against him back in 1997.

Ironically, the New York County Supreme Court disregarded Ramos's argument on technical grounds because his papers failed to give any supporting facts. He was also denied an opportunity to amend his answer to elaborate upon his claim.

When he took his case to the Appellate Division, First Department, Ramos got zonked yet again. This time, the AD1 found that the denial of his amendment request wasn't properly before the appellate panel. (It also noted that the "laches" defense wasn't a very good one.)

How unappealing.

ESCROW-A-NO-NO

The Departmental Disciplinary Committee for the First Judicial Department sought the immediate suspension of B.S., an attorney who was admitted to practice law back in June of 1980.

The Committee supposedly gathered evidence of "misconduct" and B.S. reportedly failed to cooperate with that investigation.

A review of his escrow accounts over a several year period revealed B.S. was not only combining escrow funds, but was transferring those monies to his own account.

B.S.'s response was that his former accountant had been responsible for the transactions.

Because he failed to respond to questions concerning those transfers, B.S.'s license to practice law was immediately suspended by the Appellate Division, First Department, pending the outcome of formal disciplinary proceedings.

And that's no B.S.

TWEET, TWEET!

In *Neri v. Sclafani*, Robyn Neri filed a small claims case to recover a $700 lease deposit.

Robyn alleged Francine and Mario Sclafani breached an agreement to make an apartment available by a specified date, thereby forcing the tenant to find another place to live.

The Sclafanis countered that Robyn could have moved into the unit, but refused to do so. After the Suffolk County District Court found in Robyn's favor, the Sclafanis appealed to the Appellate Term, Second Department.

Since the parties' testimony conflicted, and the District Court was in the best position to observe the witnesses's demeanor and make credibility determinations, the AT2 deferred to the lower court's decision and affirmed the outcome.

There's no rockin' or robbin' Robyn.

SLIP N' SLIDE

Laverne Blair sued Carolyn Richards (and others) claiming the runoff from melting piles of shoveled snow triggered an icy surface, which led to a slip and fall.

After the Bronx County Supreme Court denied the defendants' dismissal request, they appealed to the Appellate Division, First Department.

The AD1 thought the defendants hadn't shown that the runoff from the melting snow neither created nor exacerbated the slippery condition that triggered the accident. (In fact, Frank Richards conceded that runoffs had previously occurred and that he noticed "substantial ice on the sidewalk" the day Blair was injured.)

Not an ice breaker.

NO WALK IN THE PARK

Dawn Dennis filed suit after her daughter was hit by Robert Vansteinburg's car. (The child was attempting to cross a two-lane road to reach a park.)

Dawn claimed the Village of Ilion didn't maintain that roadway in reasonably safe condition because it failed to reduce the speed limit, install a crosswalk, or warn drivers of the presence of children-at-play.

After the Herkimer County Supreme Court dismissed the case brought against the Village, Dawn appealed to the Appellate Division, Fourth Department.

Since Vansteinburg was familiar with the area and knew that kids traversed the roadway, the AD4 was of the view the Village couldn't be held responsible for the injuries Dawn's daughter sustained.

Will Dawn break?

GUY GETS THE PLANK

In *Keaney v. City of New York*, Michael Keaney was injured while working on a renovation project at P.S. 99 in Queens. (Two planks fell from a 30-foot scaffold hitting and fracturing the guy's shoulder.)

After trial, Keaney, who claimed to suffer from restricted shoulder movement and supposedly needed to take pain killers three or four times a week, was awarded $700,000 for past pain and suffering and $900,000 for future pain and suffering.

Since that outcome was seen as excessive, the Appellate Division, Second Department, directed a new trial on damages unless Keaney agreed to accept $200,000 for past pain and suffering and $300,000 for future pain and suffering. (A $1.1M reduction.)

Bet Keaney didn't have time, room, or need for that.

HARD OF HEARING?

In *Fitzgerald v. Federal Signal Corp.*, four New York City firefighters sued Federal Signal Corp. -- the manufacturer of the sirens installed on NYC fire trucks -- claiming the devices caused permanent hearing damage. (The firefighters argued that Federal had a duty to warn of the risks associated with prolonged noise exposure.)

When the Kings County Supreme Court granted Federal's request to knock the case out, The Bravest appealed to the Appellate Division, Second Department.

Because the manufacturer had no duty to warn of an "open and obvious danger," the AD2 thought that dismissal was appropriate.

That sure wasn't what the firefighters wanted to hear.

SIGNS

After she was injured in a car crash, Laurel Frega sued Gallinger Real Estate (GRE) claiming the company had installed a sign which obstructed her view of traffic thus causing or contributing to the collision.

After the Onondaga County Supreme Court denied GRE's dismissal request, the company appealed to the Appellate Division, Fourth Department.

Since GRE's expert convincingly demonstrated that the sign was located a sufficient distance from the intersection (so that Frega could have safely stopped and observed approaching traffic), the AD4 was of the view GRE didn't cause the accident and dismissed the case.

What a Fregan car wreck!

TUG-O-WAR

In *Matter of Owens v. Garner*, a Judicial Hearing Officer (JHO) thought it would be in the children's best interests if their mother got sole custody and their father got visitation rights.

Apparently, when the dad had exclusive custody, he interfered with the mom's visits. She also showed that, while under his care, the children's grades declined and he neglected their medical and dental needs.

Although the Erie County Family Court granted temporary custody to the mother without a hearing, the Appellate Division, First Department, saw that mistake as "harmless," because the required hearing was eventually conducted. (The AD1 also didn't think the JHO was biased or that the dad was denied a fair trial.)

Since "a change in circumstances" warranted altering custody, the AD4 affirmed the outcome.

Now who will let go?

A POOLE OF BLOOD?

In *Poole v. Ogiejko*, a Bobcat "Skid-Steer" operated by Charles Coperhaver ran over Thomas Poole's foot while the two were removing bushes from Jane Ogiejko's property.

After the Suffolk County Supreme Court granted Ogiejko's request to dismiss the personal-injury case brought against her, Poole appealed to the Appellate Division, Second Department.

While a landowner has a duty to keep her land in a reasonably safe condition, since Poole's injuries resulted from his voluntary actions, and weren't directly attributable to the property, the AD2 didn't think there was a duty or obligation to protect Poole from the events that unfolded. (Ogiejko hadn't supervised or controlled the work nor was Coperhaver acting as the owner's "agent" at the time of the accident.)

Apparently, Poole lost his footing.

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Mistletoe!

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