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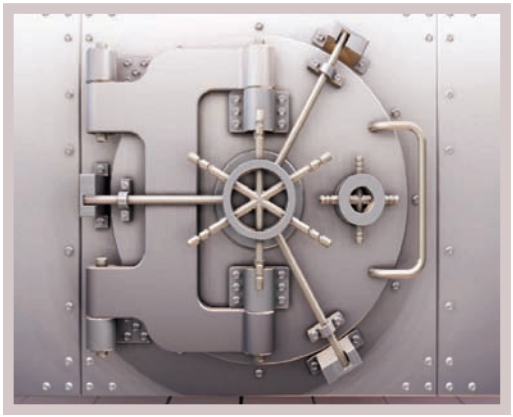
(IN)SECURITY DEPOSIT?



In *Jain v. Rich,* Anubmav Jain sought to recover a security deposit given to David Rich, his former landlord

In response to the tenant's refund request, Rich claimed to be entitled to an offset due to repairs made to the apartment after Jain's departure.

Although he alleged the stove was broken and the apartment was left in disarray, Rich was unable to prove either of those claims (because he lacked receipts for the supposed cleaning and repairs).

After the Yonkers City Court granted relief in Jain's favor, Rich appealed to the Appellate Term, Second Department, which agreed that Jain had prevailed.

And that's how Jain got Rich.

TENANT'S WINING IS OVER

In its lease with 250 West Broadway Realty Corp., FFE represented it would obtain all permits from the Department of Buildings so that a wine restaurant could be operated on the premises. When FFE's efforts were unsuccessful, 250 filed a holdover proceeding to recover possession of the commercial space.

After the New York County Civil Court granted the landlord's request, FFE apealed to the Appellate Term, First Department, which affirmed the outcome.

The AT1 thought the tenant's inability to get the required permits was foreseeable and that the tenant failed to show "impossibility of performance." (Interestingly, the lease provided FFE with the option to end the arrangement if the required approvals couldn't be secured.)

Due to the unambiguous wording of the parties' agreement, the AT1 rejected FFE's defense of "waiver" and didn't agree that the blame for the inability to obtain a new certificate of occupancy could be shifted to the owner.

Did that whine turn?

BROWN OUT

In *People v. Brown*, Kathleen Brown was charged with arson and assault (both in the second degree).

Apparently, when advised she was going to be evicted from her apartment, Brown allegedly set the joint on fire.

At trial, the prosecutors established that her conduct was intentional and that Brown had torched another apartment from which she had been evicted.

After the Erie County Court jury convicted Brown, she argued on appeal that her conviction was overly punitive in nature and that the evidence shouldn't have been considered.

Since the record established her intent and guilt, and the outcome wasn't "unduly harsh or severe," the Appellate Division, Fourth Department, affirmed the conviction.

Fade to black?

HOSED?

Caroline Dennehy-Murphy tripped over a gas-pump hose on Nor-Topia Service Center's property and later sued for the injuries she sustained.

After the Queens County Supreme Court dismissed her case, Caroline appealed to the Appellate Division, Second Department.

In order to win her suit, Caroline needed to provide evidence of a dangerous condition and that Nor-Topia was responsible for its creation.

Nor-Topia showed that that its employees twice inspected the area where Caroline claimed to have fallen and nothing perilous was observed. Because the company established it was neither responsible for, nor had notice of, the hose's positioning, the AD2 allowed the dismissal to stand.

Someone really pumped it up there.

BROWN GOES DOWN

After Phoebe Brown injured herself on an icy sidewalk, she sued the property's owner, the management company, and the building's tenant. (She claimed the group created, or had prior notice of, the slippery condition, and failed to take action.)

When the Tompkins County Supreme Court denied the defendants' request to dismiss the case, they appealed to the Appellate Division, Third Department, which thought there were unresolved questions as to whether the defendants had known of the dangers.

In addition to testifying that she hadn't seen the ice patch until after she had fallen, Brown submitted a meteorologist's report which showed that the sheet was the residue of a prior day's storm and had been in place for some 16 hours prior to her fall.

Phoebe wasn't about to fumble that time.

DOES THIS REEK?

In *Cabrini Terrace Joint Venture v. O'Brien*, Charles O'Brien appealed a New York County Civil Court decision which awarded possession of his apartment to the landlord.

O'Brien was found to have perpetrated a "nuisance"-- due to the "extreme" odors which emanated from his unit.

Since the misconduct occurred over a "period of years," and showed "no sign of abating," the Appellate Term, First Department, affirmed the lower court's determination.

Bet O'Brien thought that stunk.

A HOME RUN?

G & P Investing Company applied for a special permit to build a single-family home on a piece of property located in a J2 Business District.

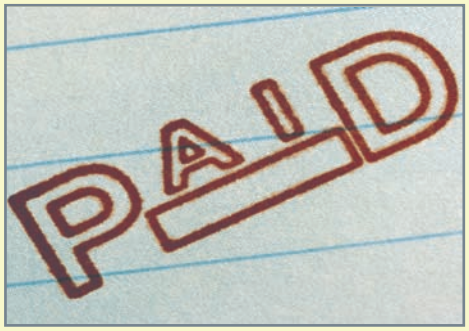
After the Brookhaven Town Board denied G & P's request, the Suffolk County Supreme Court, found in the company's favor.

On appeal, the Appellate Division, Second Department, was of the view the house fell within a use allowed by law because it was "in harmony with the general zoning plan and [would] not adversely affect the neighborhood." (According to the AD2, the proposed single-family construction met all of the governing requirements: the structure was consistent with the area's existing buildings and presented fewer adverse effects than a commercial use would.).

And, since the Board's basis for its denial was unclear and unsupported by any "factual data and empirical evidence," the AD2 felt it had little choice but to affirm G&P's victory.

Now that was in the zone!

AT2 SHOWS MORTGAGE BROKER THE MONEY



In *Lelin v. Shrestha,* Ross Lelin, a licensed mortgage broker, sued his former clients, Manohar and Renu Shrestha, to recover an unpaid commission.

The Shresthas had hired Lelin to secure a $682,000 mortgage loan and his fee, according to a written agreement, was two percent of the loan amount upon Shresthas's acceptance of a commitment.

When Lelin later applied for two separate mortgages -- one for $545,600 and for $136,400 -- the lender only agreed to offer $545,600.

After the Suffolk County District Court found that the Shresthas hadn't breached the agreement, because $682,000 hadn't been obtained, Lelin appealed to the Appellate Term, Second Department.

Since the Shresthas could have rejected the deal but opted to accept the reduced sum, the AT2 sided with Lelin. As a result, the defendants ended up owing their broker $10,912 -- two percent of the $545,600 loan.

Doubt that met with the couple's approval.

NO JOY RIDE

Michael Walker entered a Manhattan parking garage, flashed what looked like a claim ticket and told the attendant that he needed to retrieve something from his vehicle. The attendant followed Walker to the car and gave him the keys. But it was only after Walker drove away, without paying, that the attendant realized that car had been stolen.

Later that evening, while attempting to evade the police, Walker drove northbound on the southbound side of the Major Deegan Expressway and collided with Jessica Baldwin's vehicle.

When Baldwin and her passenger sued to recover damages for their injuries, the Kings County Supreme Court ended up dismissing that part of the case brought against the parking garage's owners and operators.

In the absence of some statutory violation, the Appellate Division, Second Department, agreed that the defendants weren't responsible "'for damages caused by [a thief] in operation of his vehicle.'"

Did the AD2 steal a reversal?

AD2 PICKS IT UP

Mayer Jacobwitz was standing on a sidewalk when a pickup truck and a tow truck -- both owned by the City of New York -- collided at an intersection causing the pickup truck to hit Jacobwitz.

Each driver accused the other of passing a red light and both claimed they didn't know where Jacobwitz was standing when the accident occurred. The pickup truck driver later admitted he hit Jacobwitz, and an eyewitness confirmed that Jacobwitz was standing on the sidewalk when the latter was injured.

After Jacobwitz sued, the Kings County Supreme Court denied his request to find the City liable for his injuries.

Since he demonstrated that either one of the two drivers was negligent by passing the red light at the intersection, the Appellate Division, Second Department, thought that Jacobwitz's request should have been granted -- particularly since the City couldn't show Jacobwitz wasn't on the sidewalk or shared any blame for his injuries.

Did the AD2 tow the line?

GULP!

David Coleman appealed his felony drug conviction on the grounds that the police had failed to advise him of his rights before they asked him to identify what he had swallowed.

Since he had lost consciousness, and was in need of immediate medical attention, the Appellate Division, First Department, found that the officers' questioning was necessary to provide for Coleman's "physical needs," and didn't violate any entitlement to "Miranda" warnings.

The argument that his statements were made during the course of a strip search and in the face of threats made by officers (that he faced a "tampering" charge), was summarily rejected by the appellate court, as were his "chain of custody" and "closed courtroom" objections.

Coleman must have found that hard to swallow.

RENT

After 1114 Morris Ave. HDFC brought a chronic nonpayment holdover against Georgette Johnson, the parties entered into an agreement which allowed the tenant to avoid eviction if she timely paid her future rent obligations. Because Johnson allegedly breached that arrangement, 1114 sought to evict her from the apartment.

When the Bronx County Civil Court granted the landlord's request, Johnson appealed to the Appellate Term, First Department.

The AT1 thought that the agreement's "strict enforcement" was appropriate especially since its terms were "unambiguous" and, because during the course of a probationary period, Johnson continued to be delinquent in her payment obligations.

"Rent, rent, rent, rent, rent ... Cause everything is rent."

WARRANTY CLAIM FLOODS OVER

Eric Lantzy contracted with Advantage Builders to purchase a piece of property and construct a house in Kinderhook, New York.

Shortly after he took ownership of his home, Lantzy's basement flooded. Unhappy with Advantage's response to his warranty claim, Lantzy filed suit in Colombia County Supreme Court. When that case was dismissed, Lantzy appealed to the Appellate Division, Third Department.

The AD3 didn't think the flooding damage resulted from "major structural defects"-- which was defined as "material defects resulting in 'actual physical damage' to load-bearing portions of the home and that render the home unsafe, unsanitary or otherwise unlivable."

Without that kind of physical damage, and since Lantzy continued to occupy the home, the AD3 affirmed the case's dismissal.

No taking Advantage there.

THE PRICE OF PROCRASTINATION

In 1991, Morris Gletzer obtained a money judgment against Amos Harris for about $470,000. On October 23, 1991, that judgment was docketed and a lien was placed on Harris's Manhattan condominium.

Over the course of the next decade, Gletzer tried to foreclose on Harris's condo and collect the monies due, but was unsuccessful. So, on October 22, 2001, just one day before his judgment was about to expire, Gletzer started a case to renew his lien. Interestingly, his request wasn't granted until February 2005 -- some 4 years later -- and, during that gap, Harris borrowed large amounts of money from two mortgage companies and both lenders relied on a public records which showed Gletzer's judgment had expired.

While the New York County Supreme Court allowed retroactive treatment of Gletzer's renewal, on appeal, the Appellate Division, First Department, reversed. As far as the appellate court was concerned, the extension went into effect on the date the request was granted by the lower court and the judgment couldn't be retroactively enforced and didn't supersede the subsequent mortgages.

When that determination was challenged, our state's highest court also refused to give retroactive treatment to the renewed judgment because mortgage companies and other parties need to be able to rely on pubic records for lien related information.

Given that he failed to secure the renewal within the initial ten-year window, Gletzer lost his "priority" status and ended up at the back of the line.

How forward thinking was that?

ONE STEP AT A TIME!

In *Burke v. Canyon Road Restaurant,* Eileen Burke was exiting Canyon Road Restaurant when she missed a step and fell.

After the Bronx County Supreme Court found no basis of liability and dismissed her negligence case, an appeal to the Appellate Division, First Department, followed.

The AD1 was of the view Burke failed to show that the property suffered from a "hidden trap" or that any laws or codes had been violated.

The restaurant's entranceway was well lit, and there was no evidence of any debris or water accumulation that could have triggered the fall. (Also, Canyon's general manager was unable to recall any "complaints, accidents, code violations or repairs" involving the establishment's front step.)

Burke wasn't able to scale that Canyon.

OILY GARAGE DAMAGES

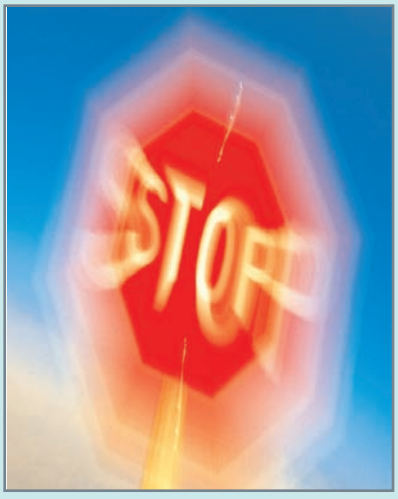
In *Gambino v. City of New York, Carl Gambino,* a NYC Department of Sanitation worker sued the City of New York for personal injuries suffered after he slipped and fell on a oily puddle in a city-owned garage. (A co-worker had notified the garage clerk of an unsafe oil-condition in that area some two days earlier.)

After the Kings County Supreme Court concluded that the City failed to keep the area reasonably safe, and was responsible for the accident, a jury awarded Gambino $5,100,000.

On appeal to the Appellate Division, Second Department, the City argued that oil spills were "inherent" and "incidental" to the use of a truck housing garage. But because a property owner is liable for injuries which occur when an owner has actual or constructive notice of an unsafe condition and fails to fix it, the AD2 affirmed the outcome (which had been reduced by prior agreement to $2,693,002.75).

The City couldn't squeak out of that one.

A SHORT STOP



Adam Soto-Maroquin sued Maureen Mellet after he was rear-ended by her vehicle.

While Mellet's passenger claimed that the collision occurred because Soto-Maroquin stopped short, the New York County Supreme Court still found Mellet liable.

On appeal, the Appellate Division, First Department, refused to disturb that outcome.

The passenger's "sudden stop" affidavit provided no information about road conditions. And, since Mellet was in a better position to know why the accident occurred, the AD1 didn't take too kindly to her silence. (Apparently, there was no affidavit from Mellet explaining what had happened.)

The AD1 sure put the brakes on that.

HOW SAFE WAS THE SAFETY SECURITY BOX?

Niriya Khafizov sued Chase Manhattan Bank after the contents of her safety deposit box were supposedly stolen. (Khafizov alleged that the box contained some $160,000 worth of jewelry, $60,000 in cash and $3,000 in coins.)

Because the lease for the box shielded the bank from liability for this type of loss, the Queens County Supreme Court dismissed the case.

On appeal, the Appellate Division, Second Department, thought that the bank had to breach a standard of "ordinary care" in order for liability to be triggered.

Since the bank required signature verification before customers were allowed entry to the safe deposit box area, and the boxes could only be opened with a customer key and a bank key, the AD2 thought Khafizov's claim wasn't maintainable.

The moral of that story: *Guard those family jewels!*

A SHAREHOLDER CLASH

Show Lain Cheng, her ex-husband Ko-Cheng Cheng, Alan Young, and Nicholas Guzzone were each 25% shareholders in a corporation which owned real property. But in 1986, only Ko-Cheng, Young, and Guzzone signed a guaranty -- wherein they agreed to pay the balance due under an underlying note and mortgage if the corporation defaulted on payments.

Of course, the entity later defaulted, and the guarantors were found liable for $2,678,612.72. Ko-Cheng, Young, and Guzzone eventually negotiated a release for $75,000, while Show Lain got stuck paying $1,352,500.

When Show Lain attempted to recoup the monies she paid from her fellow shareholders, she alleged breach of fiduciary duty and fraud, and asked the court to compel her former colleagues to comply with her discovery demands. (She also claimed that Young -- as her attorney -- had a duty to inform her of the group's settlement with the mortgagee and was obligated to ensure that she had a similar opportunity to enter into a favorable arrangement.)

After the Kings County Supreme Court rejected Show Lain's claims, she appealed to the Appellate Division, Second Department.

The AD2 agreed that Young didn't have a duty to inform Show Lain of the settlement because she wasn't a party to the guaranty, and wasn't subject to liability pursuant its terms.

In other words, Young's argument never got old.

MOTORCYCLE MANIA MOOTED

In *Matter of Granger Group v. Zoning Board of Appeals of the Town of Taghkanic,* Alan Wilzig wanted to construct a 12,000 square-foot storage facility to house about 100 of his vintage motorcycles.

After Taghkanic officials granted him a building permit, nearby property owners, and a local association known as the Granger Group, filed suit in Columbia County Supreme Court to have the Board's determination annulled.

When their case against Wilzig was dismissed, the entire group appealed to the Appellate Division, Third Department, which found the dispute moot. (Apparently, while the lawsuit was pending, no injunctive relief had been sought and the facility's construction had been completed by the time the appeal was decided.)

Seems like that case never really had any gas.

CONDO RULES

In *Helmer v. Comito,* unit owners William and Sandra Helmer sued the Board of Managers of the Clermont Condominium II to recover damages for an alleged breach of fiduciary duty.

The couple challenged the Board's authority to enter into a construction contract, and claimed that unit owners were required to approve any building related "alterations" or "improvements."

After the Rockland County Supreme Court dismissed some of their claims, the Helmers appealed to the Appellate Division, Second Department.

Typically, a court will apply the "business judgment rule" to Board actions, and will defer to that group's decisions if made in good faith and within the scope of the entity's legal authority.

The AD2 found that the Board established that the proposed renovations were "maintenance" and "repairs" authorized by the building's by-laws, and that it was well within its power to enter into the contract.

Looks like the Helmers will be needing helmets!

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