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Inside this issue

An Interesting Outlook...........1
A Wolf In Sheep's Clothing?
Simply Irresistible..................2
Calling The Tooth Fairy
License To Bill
Little Shop Of Horrors 3
Motel Melee
It's Personal
They Beat The Rap...............4
Down The Hatch
File This!
Chopped!
Newman Ferrara LLP............5
Bug-Eyed?
That House Is Not A Home
An International Incident? 6
Dialing It In?
Tech-Ni-Ca-Lity
Cooked!
Depitted?...............................7
Some Guaranty
No Insuring Against This
Buggin' Out
Season's Greetings...............8

AN INTERESTING OUTLOOK

When Robert Naldi offered $50 million to buy a Manhattan property from Michael Grunberg, the seller's broker responded--by way of an email--with a $52 million counter-offer, and gave Naldi the right to match "any legitimate, better offer."

After receiving that communication, Naldi undertook costly due diligence and had his lawyers prepare a draft contract, which provided for a $50 million sales price.

Upon learning that the seller was considering an offer from another purchaser for a higher sum, Naldi tried to exercise his "right of first refusal" but was rebuffed--and the property was sold to a third party.

While the New York County Supreme Court refused to throw out Naldi's breach of contract case, when the dispute reached the Appellate Division, First Department, it opted to end the litigation.

Although it thought the parties' emails could have formed the basis of an enforceable agreement, since there was no "meeting of the minds" as to the actual purchase price, the AD1 didn't think there was anything to enforce.

How would you have replied to that?

A WOLF IN SHEEP'S CLOTHING?

In a lawsuit, the New York State Attorney General alleged that Wells Fargo Insurance Services breached a fiduciary duty owed to customers, because the company failed to disclose that it received fees from companies to which it directed business.

The Attorney General believed that customers would have viewed Wells Fargo's recommendations differently if the company's "conflict of interest" had been openly revealed.

After the New York County Supreme Court threw the case out, the Appellate Division, First Department, and our state's highest court, affirmed the dismissal.

While insurance brokers have a special relationship with their clients, the New York State Court of Appeals didn't think there was a requirement for brokers to disclose the particulars of any financial arrangements with recommended insurance providers--particularly in the absence of any alleged wrongdoing.

While non-disclosure was seen as a "bad practice," the Court of Appeals thought the way to end it was for the state to adopt regulations which prohibited the conduct.

Baaa!

Give the gift of Knowledge ... Check out page 5.

SIMPLY IRRESISTIBLE

While at Cornell University, graduate student M. Hyman supposedly exchanged emails with Senior Professor D. Greenwood.

When the student allegedly suggested that the two get intimate, the professor asked the student to stop communicating with him. But when she later copied him on another email, the professor accused her of harassment--conduct violative of the institution's Code of Conduct.

Although Hyman countered with her own harassment and retaliation charges, her complaint was dismissed, and a University Hearing Board ended up finding in the professor's favor. Once a reprimand and a no-contact order were issued, Hyman filed a special proceeding--pursuant to CPLR Article 78--to have the outcome annulled.

After the Tompkins County Supreme Court threw her case out, Hyman appealed to the Appellate Division, Third Department, which thought the Board complied with the governing guidelines, and that its determination was supported by "clear and convincing evidence."

Lesson learned?

CALLING THE TOOTH FAIRY

While riding a school bus, Nathan Green's front tooth was knocked out when his face hit the seat in front of him.

Nathan's parents later filed a negligence case against the South Colonie School District, claiming the driver had abruptly stopped the bus as it proceeded downhill.

After the Albany County Supreme Court denied the School District's request to have the suit thrown out, an appeal followed.

Because it was able to show that it transported the students in a "careful and prudent manner," the Appellate Division, Third Department, sided with the School District, particularly since the evidence--which consisted of a video recording and the opinion of a licensed engineer--corroborated that the driver did nothing wrong. (Apparently, the Greens couldn't provide any expert analysis to counter the School District's position.)

Will there be no coin under that pillow?

LICENSE TO BILL

Phillip Mills was sued because he refused to pay for work performed on his Dutchess County home.

After the New York County Civil Court granted Mills's dismissal request, on the grounds that Design Supply Marble & Granite (DSMG) wasn't licensed, the company appealed.

Since the licensing law only applied to New York City homes, the Appellate Term, First Department, ended up reinstating DSMG's payment claim, and sent the case back to the Civil Court for "further proceedings."

There was no chipping away at that Marble.

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LITTLE SHOP OF HORRORS

After Sarah Stackpole purchased a cooperative apartment to use as a medical office, she learned that the unit couldn't be legally used as a professional space, and sued the law firm that represented her in connection with the purchase. (Stackpole claimed that since her lawyers didn't inform her of the applicable restrictions, she incurred additional costs to have the unit legalized for the intended purpose.)

After the New York County Supreme Court dismissed her case, Stackpole appealed to the Appellate Division, First Department, which affirmed the outcome based on the lower court's "credibility determinations."

Apparently, Stackpole couldn't prove that her lawyers failed to inform her of the unit's professional-use restrictions. And even if she hadn't been advised of the problem, Stackpole didn't establish--to the court's satisfaction--that she wouldn't have purchased the unit had the then-existing limitations been flagged. (Apparently, Stackpole was familiar with the "horrors" of converting a residential apartment to professional use.)

Were the cards stacked against Stackpole?

MOTEL MELEE

Skyview Motel owned property which Stuart Wald used for the storage of vehicles and machinery, and for dumping debris. When the landlord later sued for "trespass" and "private nuisance," Wald claimed to have become the owner of the property by way of "adverse possession," but the Westchester County Supreme Courthouse found in the Motel's favor.

An adverse-possession claim requires that a property's occupation be "hostile and under claim of right," "actual," "open and notorious," "exclusive," and "continuous" for a ten-year period. And if there is nothing in writing backing up the claim, the adverse possessor must show the land was cultivated, improved, or "protected by a substantial enclosure."

While Skyview was able to show that it was the owner of the property, Wald couldn't demonstrate that he had improved or enclosed the parcel, as the law required--thus compelling the Appellate Division, Second Department, to affirm the lawsuit's dismissal.

That was clearly a dump.

IT'S PERSONAL

Frederick Rudd, one of the owners of a 13-unit building, served two different rent-stabilized tenants with nonrenewal notices, indicating that Rudd intended to convert the building into a single-family dwelling, which would involve a "floor-by-floor" renovation.

When eviction proceedings were later filed, the tenants asked the New York County Civil Court to throw the cases out, claiming Rudd's notices were "jurisdictionally defective" because the owner's renovation plans were of questionable feasibility. (They also challenged Rudd's intention to actually occupy the units.)

After their dismissal request was granted, Rudd appealed to the Appellate Term, First Department, which thought the owner's notices were "sufficiently particularized" and in full compliance with the law's requirements. The AT1 was also of the view that Rudd's true intentions, and any questions as to his plan's viability, were issues best left for discovery and/or a trial.

Think the tenants took notice?

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THEY BEAT THE RAP

When Bleecker Street Tenants Corp. leased commercial space, its tenant--Bleeker Jones LLC--was given 9 consecutive 10-year lease-renewal options. The parties' agreement provided that, in the event the tenant didn't notify the landlord that it was exercising an option, the tenant could remain in the space as a "month-to-month" tenant until such time as it exercised the option or vacated the premises.

When its original lease term ended, Bleeker Jones didn't seek a renewal and stayed in possession. The landlord then sought to evict the tenant, claiming the options violated a law known as the Rule Against Perpetuities. While the New York County Supreme Court thought the deal was legal and enforceable, the Appellate Division, First Department, concluded otherwise.

Because options are usually "more attractive" to tenants and encourage the "efficient use" of property, and thus enhance the transferability of leases, our state's highest court--the New York State Court of Appeals--gave its imprimatur to the arrangement. (It could find "no sound reason of policy" to invalidate the deal.)

Could it get any Bleeker?

DOWN THE HATCH

During an open house, Richard Rackowski descended a stairway leading to a basement and was injured by a hatch door. Since the event was hosted by an independent salesperson associated with Realty USA, Rackowski sued both the company and the homeowner.

Following discovery, the company's request to dismiss the case was granted by the Saratoga County Supreme Court. And on appeal, the Appellate Division, Third Department, thought that Realty USA had no duty to warn Rackowski of any alleged danger.

Since liability for injuries based on a dangerous property condition is based upon "ownership, occupancy, control or special use," and none of those elements applied, the AD3 agreed that dismissal was appropriate. (The company was also insulated from liability because it didn't direct or control the salesperson's work.)

Bottom's up!

FILE THIS!

After her employment application was rejected, Tasha Chapman sued H & R Block, alleging discrimination on the basis of religion, and that the company had fostered a "hostile work environment."

When the New York City Civil Court dismissed her case, Chapman appealed to the Appellate Term, First Department, which believed that the lady failed to establish a discriminatory basis for H & R Block's actions, particularly since the company's characterization of her as "rude," "combative" and having a "poor attitude," hadn't been disproved.

Chapman's "suspicions" of discriminatory intent, without any evidence of misconduct, wasn't enough to warrant that claim's continuation. The AT1 also tidily disposed of Chapman's hostile work-environment theory, since she was never actually employed by the company.

How do you account for that?

CHOPPED!

Before John Rodriguez went on a week's vacation, he left Chopper--his eight-month-old Rottweiler--with AAA Veterinary Clinic. When he returned, the dog was allegedly "filthy," acted strangely, and was uncontrollable. After Chopper's behavior failed to improve, the animal was euthanized.

Rodriguez sued the clinic claiming Chopper had been neglected, and that an oak table which had been placed inside the animal's cage had been damaged. The clinic countered that Chopper was walked two to three times a day, and the table was placed in the kennel so that the puppy had something to chew on.

After the New York City Civil Court sided with Rodriguez, and awarded him $900, the clinic appealed and got the Appellate Term, Second Department, to reverse and dismiss the guy's case. The AT2 found Rodriguez's claims to be "speculative," because he didn't present any evidence that the clinic hadn't used reasonable care or had otherwise been negligent.

No lucky dog.

As seen in Super Lawyers

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BUG-EYED?

After suffering a bed-bug infestation, James Joseph sued the building's managing agent for the loss of his "personal property," and was awarded $3,342.83 by the Queens County Civil Court.

While an owner is statutorily obligated to keep a building free of "vermin, dirt, filth, garbage or other thing or matter dangerous to life or health," the Appellate Term, Second Department, could find no basis for property-damage liability--particularly since there was no evidence that the managing agent failed to act with "reasonable diligence" upon learning of the underlying problem.

Think he bugged out?

THAT HOUSE IS NOT A HOME

Because Ninth Avenue Realty believed that its rent-stabilized tenants--Charles McKay and Bret Silver--actually lived in Orange County, their tenancy was terminated, and a nonprimary-residence holdover proceeding was filed against them.

Finding that the tenants worked in Manhattan, used their "fully furnished" apartment during the week, attended events in the City, and entertained guests in the unit, the New York County Civil Court opted to dismiss the landlord's case. (The Court thought the landlord had conceded that the tenants spent over 183 days a year in the apartment, and that the Orange County residence was only a "weekend/vacation home.")

On appeal, the Appellate Term, First Department, was of the view that dismissal was consistent with a "fair interpretation of the evidence." (While McKay and Silver listed their Orange County home on some of their documentation, the AT1 didn't think that warranted a nonprimary-residence finding.)

Was there no Silver lining for that landlord?

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AN INTERNATIONAL INCIDENT?

After Tegra S.A., a Luxembourgian company, filed a breach of contract case in New York County Supreme Court against Bombardier, Inc., a Canadian company, the latter moved to dismiss the litigation on "forum non conveniens" grounds--that New York wasn't the right place for the dispute to be heard.

Tegra's principal, Taner Yilmaz, claimed that he was told that the governing contract's "choice of law" provision, which provided for the application of New York law, was a "forum selection" clause. After the New York County Supreme Court granted Bombardier's request and dismissed the case, Tegra appealed.

Since neither party principally conducted business in New York, nor executed their contract here, and because none of the witnesses resided in this area, the Appellate Division, First Department, agreed there weren't sufficient contacts to justify Tegra's election to file suit in this state.

Nor did the AD1 think that Yilmaz had been deluded or defrauded into believing that any dispute would be heard in New York, particularly in view of the contract's "merger clause"--which reaffirmed that the contract contained the parties' entire agreement, and that any changes had to be in writing.

Bombardier, away!

DIALING IT IN?

Antonio Hillard was arrested because he matched the description given by a 911 caller, and was supposedly trying to flee when officers arrived at the scene.

When he was convicted of criminal possession of a controlled substance and unlawful possession of marijuana, Hillard appealed, claiming that the officers lacked a "reasonable" basis to pursue him--because their information had come from an "anonymous" source.

On appeal, the Appellate Division, Fourth Department, thought that when a 911 caller identifies himself, provides information as to his location, and gives a telephone number, that individual isn't "anonymous" and is presumed to be reliable.

Was there a disconnect there?

TECH-NI-CA-LITY

Louise Ruffin had a process server deliver a summons and complaint to Lion Corp., at its Pennsylvania headquarters. When Lion didn't respond to the pleadings, the New York County Supreme Court awarded Ruffin a money judgment in the amount of $450,000--on default.

Two years later, Lion moved to have the case dismissed, and the default judgment vacated, because the process server wasn't authorized to effect service in Pennsylvania. While the Kings County Supreme Court thought that "irregularity" didn't require dismissal, the Appellate Division, Second Department, disagreed. It was of the view that the applicable law needed to be strictly applied, and that any deviation mandated that the dispute be thrown out.

Since Lion's objections were "technical" in nature, and had "no effect" on the sufficiency of the underlying service effort, the New York State Court of Appeals reversed and sent the case back to the AD2 for consideration of the other arguments raised on appeal.

Did that silence the Lion's roar?

COOKED!

Karen Cook was injured after her motorcycle collided with Ileane Suitor's vehicle.

In addition to suing Suitor, Cook named a used-car dealership--Blatner's Auto--as a party to the case, claiming that the company was negligent and violated local law by parking vehicles on its property in a way that obstructed motorists' view of the road. After the Niagara County Supreme Court let Blatner out of the case, the Appellate Division, Fourth Department, agreed that the company wasn't liable for what had happened, since no law had been violated. (Apparently, it was unclear what had blocked the motorcycle driver's view.)

That had to leave a bad aftertaste.

DEPITTED?

When the New York City Human Resources Administration (HRA) entered into an agreement to house P. Pitt in one of Branic International Realty's hotel rooms, Pitt wasn't a party to the contract, and all rent was paid by the City.

After that arrangement expired, and HRA cancelled Pitt's placement, Branic sought to evict the guy, claiming that he was a mere "licensee," whose right to continued occupancy of the room had been terminated. Pitt, on the other hand, claimed he was a rent-stabilized "permanent tenant," who was entitled to remain.

After the New York County Civil Court agreed with Pitt, and dismissed Branic's holdover case, an appeal to the Appellate Term, First Department, followed.

Since HRA put Pitt in the room and paid the rent, the AT1 thought Pitt lacked an express or implied landlord-tenant relationship with the hotel. As a result, the guy was only a "licensee," whose occupancy entitlement was revocable.

The pits for Pitt.

SOME GUARANTY

In 2003, Miller and Grossberg signed a lease guaranty. When that lease was extended in 2005, only Miller and Lerner signed as guarantors.

Because the tenant later failed to pay all the rent due, the landlord sought to recover the money from all the guarantors.

After the New York County Supreme Court found Grossberg liable for the sums sought, she appealed.

Since the 2005 extension altered the terms of the original deal by "significantly" increasing the rent and adding other provisions, the Appellate Division, First Department, thought Grossberg was entitled to a hearing to determine whether she was responsible for the monies in dispute.

No assurances there.

NO INSURING AGAINST THIS

Markos Lagos's lease required him to maintain a general-liability insurance policy. After he failed to provide the landlord with the necessary documentation, he was served with a notice to cure, which threatened termination of his tenancy if he didn't supply proof of insurance by a date certain.

When his lease was later ended, and a holdover proceeding was started against him, the Queens County Civil Court dismissed the case because it didn't want Lagos to lose his lease. (Courts typically disfavor the forfeiture of tenancies.)

Since the lower court lacked the power to "revive" the lease once it had been properly terminated, the Appellate Term, Second Department, reversed and awarded a judgment of possession in the landlord's favor.

That's some policy.

BUGGIN' OUT

After 85-87 Pitt Street, LLC, purchased a piece of property from 85-87 Pitt Street Realty Corp., the building reportedly suffered from a "bug infestation."

When the purchaser later sued for "fraudulent inducement, fraudulent misrepresentation and fraudulent concealment," the New York County Supreme Court dismissed the case.

On appeal, the Appellate Division, First Department, agreed that the sales contract's "merger clause" shielded the seller from liability. That provision provided that the buyer had an opportunity to inspect the building, and accepted it "as is."

The seller wasn't required to disclose the existence of an infestation since the condition wasn't "a matter peculiarly within a seller's knowledge," and could have been discovered by way of an inspection.

The AD1 sure exterminated that.

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