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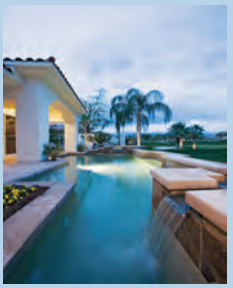
DIVE!



Kevin Maloney, the owner of the east penthouse of a Manhattan condominium, agreed he wouldn't apply to the Department of Buildings to enclose any space "appurtenant" to his unit, unless the owners of the west penthouse approved the plan.

When Maloney wanted to build a pool on the terrace next to his unit, and didn't ask for approval, his neighbors went to the New York County Supreme Court to stop him from doing the work. After their case drowned, and Maloney was awarded legal fees, an appeal followed.

Because the pool area belonged to the condominium and wasn't "appurtenant" to Maloney's unit, and since the guy had paid the building over $300,000 for the right to transform the terrace into a pool, the Appellate Division, First Department, agreed that the renovations didn't amount to a breach. (The award of fees in Maloney's favor was stricken because he wasn't an "aggrieved" or a "prevailing" party under the governing agreement.)

Was that a belly flop?

HO-HO-HO!

Michele Barton and her fellow tenants wanted to exercise an option to convert their building into a cooperative, but the building's owner--70 St. Nicholas Avenue Housing Development Fund Corporation--refused to cooperate.

When litigation ensued, and the New York County Supreme Court denied the owner's request to throw the case out, St. Nicholas appealed. While St. Nicholas was "authorized" to convert the structure into a cooperative, it wasn't legally required to do so. And in the absence of any contractual arrangement or other basis to compel the conversion, the Appellate Division, First Department, agreed that the tenants' case couldn't continue.

Now, that was naughty.

A SCALDING OUTCOME

Left without heat and hot water, Kimberly Horn had to boil water on all four of her stove burners and it wasn't long before two pots of hot water spilled on her.

When she later sued her landlord alleging that his failure to provide heat and hot water caused her injuries, the Kings County Supreme Court granted the landlord's request to dismiss the case.

Since Horn's injuries weren't "normally" associated with an owner's failure to provide essential services, the Appellate Division, Second Department, allowed the dismissal to stand.

We don't have a burning desire to discuss this further.

NO BASHING THE BISHOP

David Bishop was in a rush to catch a bus, forgot to look both ways before crossing the street, and ended up getting hit by a car.

After he sued Ashley Curry to recover compensation for his injuries, Curry asked the Erie County Supreme Court to dismiss the case, claiming Bishop had been inattentive and negligent. When the Erie County Supreme Court denied that request, Curry appealed to the Appellate Division, Fourth Department, which felt that she hadn't shown an entitlement to legal relief.

Apparently, Curry couldn't remember how fast she was driving or demonstrate that evasive measures would have been impractical. Since it was possible Curry was speeding, or otherwise driving negligently, the AD4 directed that the case proceed to trial.

Will Bishop have a chance to Curry favor?

A CAKE WALK

Ronald Ryan was carrying a cake down a hallway at the Richmond County Yacht Club and fell when he missed a couple of steps.

After he filed a personal-injury lawsuit, the Richmond County Supreme Court granted the Club's request to have the case dismissed.

Since the club didn't have a duty to protect Ryan from, or warn him about, an "open and obvious" condition that wasn't "inherently dangerous," the Appellate Division, Second Department, pounded the guy a bit further and agreed that Ryan didn't have a case.

Was that plain vanilla?

CHAIRY

While at work, Detective Anderson Alexander fell off a chair and accidentally shot himself in the knee. He later sued, claiming he had been given a defective piece of furniture.

After a jury awarded the guy $5,000,000, the City sought to set aside the outcome, and appealed when the Kings County Supreme Court denied that request.

In order to support his case, the detective needed to show that his injury was the result of the City's willful or negligent failure to comply with a statute, ordinance, rule, or government order.

Since a "rational person" wouldn't have reached the same outcome as the jury did in this case--particularly since the detective never testified that any part of the chair was defective or broken, and no one complained about that particular piece of furniture before the incident--the Appellate Division, Second Department, reversed and found in the City's favor.

Although another officer at the same station had fallen out of a chair, there was no evidence that it was the same kind the detective had used.

"I know you are, but what am I?"

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

ONCE ON THIS ISLAND

When William Burns quit his job with Island Sports Physical Therapy, and started his own business, his former employer sued him for allegedly absconding with company information.

After the Suffolk County Supreme Court found in Burns's favor, and dismissed the case, Island Sports appealed.

Even though Burns had made preparations to open his business while he was still associated with Island Sports, since he didn't use the company's resources, solicit its customers, or steal any "trade secrets," the Appellate Division, Second Department, was of the view no legally actionable wrongdoing had occurred.

Was that a stretch?

THE HOUSE ALWAYS WINS

Jeanne Consola thought she was in the money when her instant lottery ticket matched the winning numbers which would have entitled her to a five-million-dollar prize. But, as luck would have it, the State Division of the Lottery claimed her ticket wasn't valid.

Her misfortune continued when she later filed suit and the Court of Claims threw her case out. Although Consola's ticket showed a "6," lottery officials demonstrated that there had been a printing error and that the actual number should have been a "26." (Apparently, there were a few thousand misprinted tickets.)

Because the Lottery established that the validation number on Consola's ticket didn't match those on the official winners' list, and since she couldn't otherwise demonstrate an entitlement to the prize, the only consolation that the Appellate Division, Third Department, afforded Consola was . . . a replacement ticket.

Pretty sad.

DISCREDITED

After he fell behind on his credit-card payments, Anant Gupta entered into an agreement with Chase Bank to pay the sum of $8,896.23, in 12 monthly installments. In the event he failed to honor that schedule, the bank had the right to seek $13,646.50--the full amount of the original debt.

When he later defaulted, and Chase sought a judgment for the higher sum, Gupta claimed that the IRS had "frozen" his bank account, and that the settlement was somehow "defective" because it omitted his Chase Bank account number.

Both the Queens County Civil Court and the Appellate Term, Second Department, didn't buy those arguments, and found in the bank's favor. Absent "fraud, collusion, mistake or accident," the AT2 was of the view there was no basis to relieve Gupta from the consequences of the settlement's terms.

The right relationship *is* everything.

NOT OVER EASY

Daniel Castiglione filed suit when his daughter was hit by an egg thrown by James Quinn's son. And when the Kings County Supreme Court refused to find in his favor, Castiglione appealed.

Because there was nothing in the record corroborating his assertions, the Appellate Division, Second Department, thought it was premature to side with anyone, and that the case needed to proceed to trial.

Will he put it together again?

A STANDING INVITATION

After school officials reported a laptop missing, the police--using pre-installed tracking software--traced the machine's location.

Upon arriving at a Bronx home, officers entered an unlocked vestibule, without announcing their presence. Once inside, officers knocked on another door and were invited inside by a woman who supposedly said, "Thank God you're all here," and who explained that her brother had been "acting up" and that she "was going to call [the police] anyway, if [her brother] kept it up."

Officers were then directed to an area where they saw a young man using a laptop. And after the kid denied ownership of the machine, Leroy M. entered the room and admitted that it had been stolen by a friend.

Leroy--who was then a minor--was charged with conduct which would have constituted fourth-degree and fifth-degree criminal possession of stolen property for an adult. After the Bronx County Family Court denied Leroy's request to knock out the evidence on the grounds that the police "had entered without a warrant, permission to enter, or exigent circumstances," the Appellate Division, First Department, sided with the kid. But when the case reached our state's highest court, the New York State Court of Appeals reversed.

While entering the vestibule might have been improper, the sister's invitation "purged" the officers' conduct of any illegality. (The initial unannounced entry was seen as a relatively low-level of intrusion on personal privacy.) As a result, the Court of Appeals thought the case's evidence--the computer and Leroy's statement to police--had been legally obtained and could be used at the youngster's trial.

Bet Leroy didn't lap that up.

NO BURNING THIS WYCHE

While the New York State Division of Parole (NYSDP) was conducting a parole-revocation hearing, Gregory Wyche--who had a history of seizures--became ill and was hospitalized.

Interestingly, his request to adjourn the proceeding was denied, because the hearing officer thought Wyche was "feigning illness." On administrative review, the Bronx County Supreme Court annulled NYSDP's determination and restored Wyche's parole.

Since Wyche had a "fundamental due-process right" to be present, and the time for conducting a new hearing had long since passed, the Appellate Division, First Department, agreed that reinstatement of parole was the appropriate remedy.

Wyche way would you have gone?

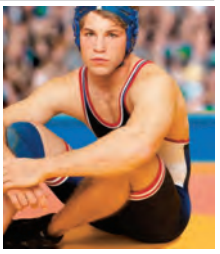
HOW EXOTIC?

Convicted of first-degree manslaughter and weapons possession by the Onondaga County Court, Benedict Agostini claimed he was denied a fair trial because the prosecutors had questioned his wife about her work as an "exotic dancer."

While acknowledging the questions were improper, the Appellate Division, Fourth Department, didn't think that any "substantial prejudice" resulted from the inquiry--particularly in view of the trial judge's instruction to the jury that the testimony be disregarded.

There was no skirting that.

SCISSORS GRIP



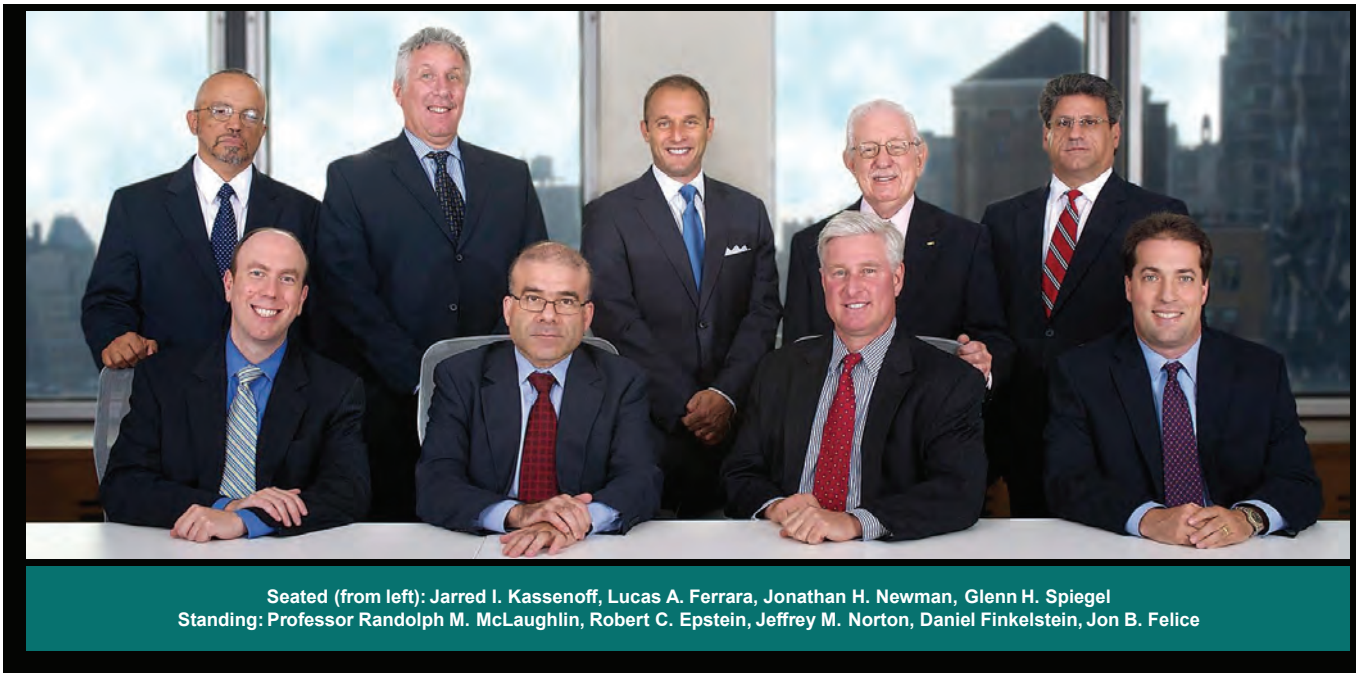
Nathanial Herbert was convicted by the Kings County Criminal Court of menacing in the second degree because he had inappropriately wielded a pair of scissors. On appeal, Herbert claimed the prosecution's complaint hadn't sufficiently described the scissors or the manner in which he had employed them.

The Appellate Term, Second Department, was of the view that prosecutors only had to allege that Herbert positioned the scissors at the victim's neck in order to cause that person to fear physical injury or harm. Details--such as whether Herbert used the scissors' blades or rounded handles--weren't seen as necessary or relevant.

They cut that dead.

Continued Growth for Manhattan Real Estate and Litigation Firm

As Seen In… Forbes, November 21, 2011



Seated (from left): Jarred I. Kassenoff, Lucas A. Ferrara, Jonathan H. Newman, Glenn H. Spiegel
Standing: Professor Randolph M. McLaughlin, Robert C. Epstein, Jeffrey M. Norton, Daniel Finkelstein, Jon B. Felice

Newman Ferrara LLP

At a time when many law firms throughout the country are cutting staff and scaling back services, Newman Ferrara LLP – a New York real-estate and civil-litigation firm – is on the grow, adding practice areas and continuing to attract new clients.

The firm's months-old transactions division already processes thousands of commercial and residential transactions, including many complex purchases and sales valued in the hundreds of millions of dollars.

And the firm has just launched a class- and complex-litigation group that is pursuing a diverse range of cases involving consumer fraud, deceptive practices, housing and employment discrimination, police misconduct, voting rights, ERISA and securities fraud, among other areas.

> ***"When clients succeed, so do their lawyers."***
>
> – Lucas A. Ferrara
> Founding partner

"Newman Ferrara is an exciting firm, and I wanted to be a part of it," says partner Jeffrey M. Norton, who heads the class- and complex-litigation practice. Norton left another well-known New York firm to join Newman Ferrara in early September, along with Pace University School of Law Professor Randolph M. McLaughlin and several members of their support team.

'Lawyers' Lawyers'

Newman Ferrara was founded by two of New York's most highly respected real-estate and civil-litigation attorneys. Lucas A. Ferrara, an adjunct professor of law at New York Law School, co-authored the West treatise *Landlord and Tenant Practice in New York*, and his essays and articles have appeared in a variety of publications. Jonathan H. Newman, a published author, has conducted closings of numerous multimillion-dollar properties and coordinated thousands of others. He also has extensive trial and real-estate litigation experience. They and their colleagues are frequently contacted by the media for their unique insights on the latest legal developments and trends.

Based in Manhattan, Newman Ferrara attorneys are intimately familiar with all city, state and federal courts, with the experience to navigate them quickly and effectively. They advocate aggressively at both the trial and appellate levels, prosecuting and defending against a wide variety of claims nationwide.

"Our growing roster of clients, from individual home and business owners to many of New York City's largest property owners and managing agents, is testament to our ability and success," Newman says. "Whether they are looking to purchase or sell real property or need representation in a convoluted civil dispute, people come to us because they know we will get the job done."

With more than five decades of combined trial and transaction experience, the attorneys of Newman Ferrara are widely viewed as "lawyers' lawyers." "Many of our colleagues, including the partners at some of the city's largest law firms, call us when they have questions about some of the more arcane aspects of New York's real estate law," Ferrara adds.

"Our growth in this challenging economic climate is due, in large part, to our ability to craft creative, cost-effective solutions to our clients' problems. And when clients succeed, so do their lawyers."

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STOP, IN THE NAME OF LOVE

While patronizing a Brooklyn club, owned and operated by Percell Smith & Sons, Ricky Love got into an argument with another guy over a spilt drink. As he was being ejected by a bouncer, Love was thrown against a wall and suffered a broken jaw, and was later awarded $250,000 by a Kings County Supreme Court jury.

When Percell's request to set aside the verdict--on the grounds the bouncer was an "independent contractor" who had exceeded the scope of his authority--was denied, the company appealed.

Since Percell's arguments weren't raised during the earlier stages of the case, the Appellate Division, Second Department, refused to consider them. But because it found the award to be "excessive" and unreasonable, Love was directed to accept $175,000 or undergo a new trial.

Why would they push Love away?

FROM HERE TO ETERNITY

Angelina Rinaldi used an EvenFlo baby carrier, which she bought from Toys"R"Us, a number of times without incident. But on the sixth occasion, after her kid--Eternity--fell out of the device, Rinaldi sued, claiming that the product was defective and that she hadn't been properly warned as to the item's use.

When the Queens County Supreme Court dismissed her case, Rinaldi appealed.

Because the companies were able to establish that the carrier wasn't broken, met all industry standards, and was accompanied by instructions which were understood by the user, the Appellate Division, Second Department, affirmed the dismissal.

(According to the AD2, since Rinaldi's experts weren't familiar with the product, or with baby carriers, their analysis had been correctly disregarded.)

Now that didn't last very long at all.

UPLIFTING?

While working as a flagman on a construction site, a manlift malfunctioned and, in an effort to help, Antonio Simoes climbed into the aerial basket. Soon after, when a co-worker nudged the machine over the curb, the vehicle fell and Simoes was injured.

After he filed suit against the City of New York, the Bronx County Supreme Court dismissed one of his Labor Law claims, and an appeal followed.

Since his duties as a flagman didn't involve "elevation-related risks," the Appellate Division, First Department, thought Simoes was acting outside the "scope of his employment" when he attempted to fix the manlift, and that he wasn't entitled to relief under Labor Law §240(1)--which requires that workers be given scaffolding and other elevation-related protective devices.

The appellate court did find that his other claim, brought pursuant to Labor Law §240(6)--which requires that workers be given "reasonable and adequate protection"--warranted further inquiry and examination.

Who's going down, now?

WHAT ABOUT THE CHILDREN?

Like any father, Robert Secrist wanted to see his kids. But unlike most dads, Secrist was incarcerated for killing the boyfriend of his children's mother.

When Secrist asked the Cattaraugus County Family Court for the right to see the youngsters, the Family Court was advised of an order of protection that prohibited the guy from contacting his kids for "100 years."

When the Family Court denied Secrist's visitation request without a hearing, he appealed to the Appellate Division, Fourth Department, which was equally unsympathetic. A hearing wasn't required because the Family Court already had enough information to determine what was in the children's best interests.

Secrist out?

BLIND EYE?

Sally Dinerman bought $10,000 worth of stock in a company that had been promoted by Sonny Bloch, a former radio talk-show host. When she finally realized her investment was worthless, Dinerman sued the radio station for fraud and sought to recover the cost of her investment.

After the Kings County Civil Court dismissed her case because she had missed the governing deadline--the "statute of limitations" had run--Dinerman appealed.

Concluding that the mere fact that she didn't know about the fraud wasn't enough to excuse her inaction, the Appellate Term, Second Department, found that Dinerman was required to file suit within two years of the date she should have discovered the misconduct--by way of "reasonable diligence." Apparently, Dinerman acquired the stock in 1994, and failed to track the progress of her purchase for some 14 years. She also claimed to be unaware of the extensive media coverage that accompanied the investment scandal, the cancellation of Bloch's radio program, his trial, and his death in July of 1998.

Since hundreds of other defrauded investors sued Bloch back in 1994, the AT2 allowed the dismissal to stand because it believed a "person of ordinary intelligence" would have acted sooner.

Think Dinerman took stock in that?

IS THIS UNAMERICAN?

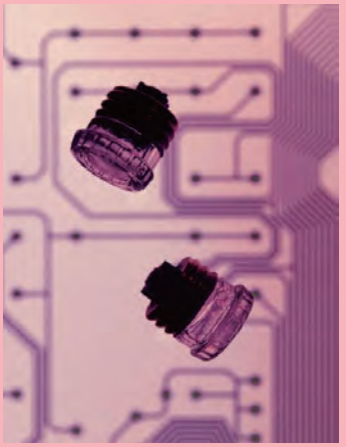
Katia Maguire checked her luggage--which contained expensive camera equipment--with American Airlines prior to her flight to Seattle, Washington. When her bag was lost, she sued the carrier and was awarded $5,000 by the Kings County Civil Court. But the Appellate Term, Second Department, disapproved.

Not only did the airline's "terms and conditions of carriage" limit the company's lost-bag liability to $3,300, but the camera equipment was expressly excluded from coverage.

Since Katia admitted she received a copy of those terms and knew that her camera equipment wouldn't be covered, but still placed those items in her luggage, the AT2 shuttered the poor lady's case.

How negative.

A MATTER OF SEVENTEEN SECONDS



When Altronix Corporation agreed to buy a custom-built "fuse and clip insertion" machine from Central Machining Specialties, Inc., their contract specifically provided that the unit would have a cycle time of less than 80 seconds. When it later received a machine with a cycle time of 97 seconds, Altronix filed suit to recover damages for breach.

After the Suffolk County Supreme Court denied Altronix's request for relief, an appeal to the Appellate Division, Second Department, followed.

Since Central failed to comply with its contractual obligations, the AD2 thought the company was clearly liable for its non-performance.

Central must have blown a fuse.

MISSED THE BUS?

After conducting background checks on NYC school-bus drivers and bus-escort applicants, the NYC Department of Education (DOE) categorically rejected a bunch of individuals who had been convicted of a crime. Upon learning of that outcome, the group sued to have their applications reconsidered.

When the New York County Supreme Court dismissed their case, the applicants appealed.

While DOE has a duty to protect its students' safety, the Appellate Division, First Department, was of the view the agency was also bound by regulations which required that each applicant be given an opportunity to "refute or explain" any "derogatory information" before a final determination was made.

BUS-ted!

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ONCE THE WATER RECEDES

When Laurie York and Chris Frigon were sued by their landlord for unpaid rent, they asked the court for a rent abatement due to "persistent flooding"--which not only caused their bathroom ceiling to collapse but triggered "significant periods" of no water service.

Because another had tenant caused the flooding and triggered the conditions, the landlord argued it wasn't responsible for what happened, but the New York County Civil Court still awarded the tenants a $10,140 rent reduction.

Since landlords have an absolute duty to provide their residential tenants with habitable space, even if another tenant's misconduct is the cause of the problem, the Appellate Term, First Department, left the abatement undisturbed.

What did the Frigon landlord have to say about that?