MondayMonday

Nondelegable Duties Still Healthy

December 30, 2013

In this season of peace on earth and good will towards our fellow man, we rejoice in being a servant of the law. Our master who, goodness knows, screws up mightily at times, worked last week and the result was poetry. It awakened everything from high school social studies at Stuyvesant to first year Con Law at Flatbush Law School.

Where did this all happen? In a federal district court in Ohio. Federal district court judges, as those of us who practice in federal court know all too well, are lifetime, Article III judges who don't take crap from anyone. The lack of interlocutory appeals ensures that their rulings are sacrosanct, under most situations, until the end of the case. A district court judge can stop General Motors with the stroke of a pen, if he or she wants to.

Judge Timothy Black did more than that, however. Faced with two individuals who were denied the right to have their marital relationship noted on their spouses' death certificates in Ohio, because the state doesn't recognize same-sex marriages, Judge Black fired back in a 50-page decision which began by noting that the Great State of Ohio duly recognized marriages recognized in other states between

first cousins, certain minors and those that aren't even married (common-law marriages.) We leave Judge Black's courtroom with the punchline: "[O]nce you get married in one state, another state cannot summarily take your marriage away, because the right to remain married is properly recognized as a fundamental liberty interest protected by the Due Process Clause of the United State Constitution." Remember the 14th Amendment? "Therefore, under the Constitution of the United States, Ohio must recognize on Ohio death certificates valid same-sex marriages from other states." The underlining is Judge Black's, not ours. Pacem in terris.

The simple things are pure and good. They provide immutable concepts that, as the saying goes, you can take to the bank. Such is the principle annunciated in *Blatt v. L'Pogee, Inc.*, 2013 NY Slip Op 08582 (2d Dep't 12/26/13). Plaintiff was a salesperson employed by defendants as an independent contractor. Near the entrance to defendants' showroom, plaintiff slipped and fell on a hazardous condition created by another of defendants' independent contractors. On this motion for summary judgment, defendants, who so carefully protected themselves by using only independent contractors, learn this simple rule instead.

While is may be true that a party who hires an independent contractor is not liable for that independent contractor's negligent acts, that is only so as to duties which are nondelegable. As to nondelegable duties, such as those to keep a premises safe, independent contractor or not, a defendant owner will be liable for public premises. "Whenever the general public is invited into stores, office buildings, and other places of public assembly, 'the owner of such premises is charged with the duty to provide members of the general public with a reasonably safe premises, including a safe means of ingress and egress.'"

The long line of cases supporting the proposition are in the decision, not the least of which is the Second Department's own *Backiel v. Citibank*, 299 A.D.2d 504, a perennial favorite. The beauty here is that the use of the property controls, and the astute practitioner need not even read *Espinal* to find liability. Sometimes the law is like an onion; you need only peel away what you need, leaving all else undisturbed.