



MondayMonday

Another Way To Skin The Cat

April 21, 2014

We've spoken before about hearing Justice Scalia speak in person and how unusual it was, for someone of our age, to be treated to a single justice speaking about the law outside of the Court. Well, how about *two* justices? The Court's Odd Couple, Justices Scalia and Ginsburg, appeared at the National Press Club last week, where they were asked what amendment they would make to the Constitution if given the chance. According to the National Law Journal, Justice Scalia said an amendment that would make making amendments easier, while RBG, being the rock star that she is, said she would add the Equal Rights Amendment. Scalia, ever the calculator, figured out that less than 2% of the population could prevent any amendment.

Just last week, also commenting on proposed amendments, former justice John Paul Stevens, who has a book on the subject, suggested in a *Washington Post* essay that the Second Amendment could do with just 5 more words, explaining that the right to bear arms is limited to those times "when serving in the Militia."

The Heir to the Throne, with the wisdom and clarity of thought that



only comes to 1Ls, turned to us this weekend while studying for finals and declared: "The Constitution is not just an historical document; It's the law." Oh, how right you are Grasshopper. And that's why we shouldn't let judges anywhere near its words, no matter how hard they try. Citizens write the law; judges only apply it. What a good idea to build a country on.

On her way down from the mezzanine to the lobby of the Victoria's Secret store on West 57th Street in Manhattan, Chrystelle Rondin tripped and fell on the staircase. At trial, she demonstrated that the fall was caused by a half-inch height differential between the first and second steps which made her lose her balance.

That expert opinion was countered, however, by a defendant who showed that the height differential of the first and second step risers complied with the New York City Administrative Code's § 27-375. The First Department, in *Rondin v. Victoria's Secret Stores, LLC*, 2014 NY Slip Op 02664 (1st Dep't 4/17/14), belays the applica-

tion of that section by reminding us all that 27-235 only applies to "interior stairs" and these are defined, in 27-232, as stairs that serve as a required exit, with an "exit" being defined, in the same section, as a means of getting from the interior of a building to the open exterior space. (You knew that, didn't you?) The stairs at issue only went from the mezzanine to the lobby.

All over? No. Plaintiff's expert supported her opinion by referencing the NFPA's Life Safety Code that disallowed any variation between risers of more than 3/16's of an inch. The Code was a "published authoritative and nationally accepted industry standard for safe staircase construction and maintenance," as defendant's expert agreed. "Plaintiff's expert supported her opinion that the stairway was defective 'by nonconclusory reference to specific, currently applicable safety standards or practices,'" citing *Contreras v. Zabar's*, 293 A.D.2d 362 (1st Dep't 2002).

The store, renovated in 1996, fell within the 1994 Life Safety Code. "Thus, plaintiff's expert testimony that the one half inch differential caused plaintiff's fall established a case of negligence against defendant." Plaintiff gets to keep her verdict, which apportioned liability 25% to her and 75% to the store.

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