MondayMonday

A Little Tin Key Unlocks The Box

April 28, 2014

While all of New York reveled in memories of the 50th anniversary of the 1964 World's Fair last week, we merely felt cheated. Promises had been made. We were supposed to get our own jet-pack in the 21st Century, or at least a flying car. We have none of those things. Somewhere along the way, a secret deal had been made. We gave up the jet-pack and the flying car, and received the Belgian waffle instead. This was not fair (no one asked us) and caused the untimely death of the American waffle, which had no problem existing since the Pilgrims landed with only maple syrup to accompany it. How can we respect any waffle which needs strawberries and powdered sugar just to face the morning? All in all, we wuz robbed.

So, we are left with pitted roadways which are a national embarrassment. Our once majestic national highway system is a joke, gone the way of the orange roof and the 26 flavors. Here in New York, the parkways, expressways and main thoroughfares are barely passable, drivers forced to brake and veer to avoid damage to their autos. As a result, traffic has slowed to a crawl. Nothing moves and the concept of "motoring" is a fantastic one,

fit only for the transporting of unicorns across state lines.

We remember lining up along the steam table at a Thruway Hot Shoppe, placing heavy china plates of Salisbury steak and mashed potatoes on our tray. "One day," Dad said, we'll eat our food in pills and then go out to the car, push a button and fly to the Catskills!" Thank God he never lived to see this.

The law (and unfortunately, lawyers) can be petty indeed. The smallest of things can derail a great idea or shift liability. Noel Roman tripped over a sidewalk defect near a catch basin in 2010 and brought an action against the storeowner abutting the sidewalk for his injuries. Despite the existence of 7-210 of the Administrative Code of the City of New York, which shifted liability for injuries due to defective sidewalks from the City to the abutting property owner, the defendant storeowner moved to dismiss.

In *Roman v. Bob's Discount Furniture of NY*, 2014 NY Slip Op 02762 (2d Dep't 4/23/14), the Appellate Division affirmed the order of Supreme Court which had denied the motion to dismiss, but the route taken bears some discussion here.

While it is true that 7-210 expressly shifts tort liability to the abutting landowner, that liability is only for injuries resulting from sidewalk defects. Existing defects in gratings or covers on the street are not part of 7-210, a statute in derogation of the common law which, therefore, must be strictly construed. Enter 34 RCNY 2-07(b), which makes owners of street covers or gratings responsible for their condition and the area "twelve inches outward from the perimeter of the hardware."

Since defendants failed to make a prima facie showing that they did not own the catch basin or that plaintiff had been injured outside of the 12 inch perimeter centered by that catch basin, their motion must be denied.

The petty statute gambit cuts both ways, such as where vegetation on a property blocks sightlines and causes an auto collision.

In *Preux v. Dennis*, 2014 NY Slip Op 02763 (2d Dep't 4/23/14), that's just what happened. However, without a common law duty requiring that a property owner trim those obscuring hedges, and with no statutory requirement directing the trimming with the intend to protect motorists, the property owner has no tort liability either.