MondayMonday

Methinks A Lady Says Too Much

June 9, 2014

In order to maintain our curmudgeon credentials, we must regularly demonstrate a staggering example of political incorrectness. Here's our entry for this week: We hate bicycles. Because of a former mayor who was obviously besotted on a visit to Amsterdam, New York City, the place of our birth, has been transformed into a two-wheeled free-for-all. Other people go to Amsterdam and become enamored with the benefits of medical marijuana, but not our guy. Instead, he sliced up New York's streets with obscure indecipherable traffic markings and then, to compound the insult, destroyed hundreds of parking spaces by mounting pedal-for-pay bike racks, which have as much to do with New York as Citifield has to do with the Mets.

Our brain is too small to handle the complexities of New York auto traffic, New York pedestrians, New York roads and now, New York idiots on bicycles. Something has to give. City bikers, who appear to be built solely of attitude, with scarcely a nod to courtesy, believe they own the roads. They yield to no one and to nothing. Pedestrians are fair game and the direction markings on their own bike lanes

are merely suggestions, like the traffic signs in Lima, Peru. However, with no Pisco Sours to make the day bearable, New York's bicyclists have made this City a transportation nightmare, at a cost to everyone except themselves, in an homage to the virtue of selfishness.

We pray for snow or a reasonable cost, fender-mounted machine gun. Of course, we could just learn to fling our car doors open with reckless abandon, which would be cheaper and an insurable risk, but, that would be wrong. Wear your helmet anyway.

We've often warned that *MondayMonday* is not meant to replace reading the law every now and then. For that reason, we frequently avoid reviewing obvious cases, like last week's Eagle Street offering in *Wittorf v. City of New York*. Instead, we draw your attention to a case like *Quintana v. TCR, Tennis Club of Riverdale*, 2014 NY Slip Op 04062 (1st Dep't 6/5/14), decided on the same day at *Wittorf*.

No one is perfect, least of all our clients who, because of age or the very mechanism of their injury, cannot pinpoint how they came to be injured in the first instance. Defendants call this the plaintiff who "failed or is unable to identify the precise cause of her slip and fall," and they think that means that summary dismissal of the complaint is a surety. After all, the 1st Dep't said as much in *Zanki*, 2 AD3d197, aff'd 2 NY3d 783 (2004).

Nay, nay. In *Zanki*, the court explains, plaintiff said she never saw anything on the steps she slipped on, either before or after the accident; she merely inferred the stairs were wet because her sleeve was wet at the end of her fall.

Juanita Quintana, on the other hand, "when pressed by defendant's counsel at her deposition," said she slipped on water which was on the step "and saw water in the vicinity of the step after her fall." Ms. Quintana had also previously mentioned to defendant's employees in this women's locker room, that the locker room floor was slippery when wet. Water as a putative cause of her fall was, therefore, not mere speculation or guesswork, nor was the recurring condition which produced it.

We have no idea what the defense attorney who "pressed" out this testimony is doing today, but we are reminded of the rule we learned as a young advocate: When you get what you want, stop asking questions.