MondayMonday

Every Dog Has Its Day

March 31, 2014

Opening Day 2014 and we find ourselves sitting in the parking lot of Citifield with the Heir to the Throne and doing some last-minute research on Westlaw's mobile website. No rest for the weary. We only wish that the answers were as clear for the Mets as they are in the law. "Seek and 'ye shall find" is just not a baseball maxim.

We have been seeking for years now, first at the Polo Grounds, then at Shea Stadium, and now in this Stadium-By-Disney, bearing little that is unique or loveable. But it doesn't matter. Not at all. Because the sun is shining. Because there are hot dogs with mustard and green pickle relish. Because there is a cold beer. Because, on Opening Day, there is no past, only future.

Sure, we talk of past seasons and past failures (we are Mets fans, after all, and there are precious few past successes.) We talk of past players, past managers, even past announcers, remembering Ralph Kiner. What we don't talk about is how we simply love being together, just the two of us. Sitting in the stands. Feeling the sun on our faces. Doing just what we've been doing since the days that the Heir had

to be taken to the bathroom and held up high enough to use the urinal, like a man.

He's a man now alright, and at 6'5" he reaches the urinal all by himself, but the game is still the same and always will be, no matter where it's played. Of course now, we are more likely to fall asleep on his shoulder than he is on ours, and he buys beers for both of us. We're not completely in our dotage, however. We can still manage the urinal all by ourselves. Play ball!

Pity the poor cousin of Labor Law 240(1) and 241(6). Labor Law 200 is a toss-off, demeaned as nothing more than a statutory repetition of the common law. It does not buy attorneys swimming pools or pay for their children's weddings. At best, it is an also-ran; a discard in the personal injury world. However, in a world without sunlight, the lowly candle is king.

Plaintiff in *Quituizaca v. Tucchiarone*, 2014 NY Slip Op 02024 (2d Dep't 3/26/14) saw defeat snatched from the jaws of victory when the Second Department dismissed his 240(1) and 241(6) claims based on plaintiff's fall from a ladder (non-enumerated activity.) But that mutt 200 claim lives on and, like the country song goes, the girls always get better looking at closin' time.

While defendants had no authority to supervise plaintiff's work, that's only half the Labor Law 200 rubric. The other is where, as here, plaintiff's claims were based on the dangerous condition of the premises themselves, "specifically the structural design, construction, and condition of a portion of the floor." Under the lease, defendants were required to repair structural damages to the premises and had the right to re-enter to do just that. Unless defendants can show that they didn't create the structural damage that contributed to plaintiff's fall, or didn't have notice of the condition, they can't very well expect summary judgment on the claim.

So, what have we learned? Not much (we hope.) But, if nothing else, it's that there is sometimes a reason for the boilerplate we indulge in every day. Each of those Labor Law provisions that we intone, promising easy money and guaranteed riches, can abandon us as quickly as the gambler's lucky streak. If we've done our work, however, there might remain a cause of action that, with a fair modicum of effort, can still save the day.