MondayMonday

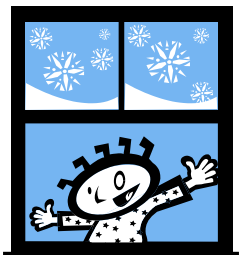
Forewarned is Constructive Notice

September 29, 2014

It is fall, when a young man's fancy turns to . . . television. This is the season as children when we would buy the only copy of TV Guide we were allowed to purchase, the Fall Preview Issue. We would plan our evenings (and Saturday mornings) with the skill and solemnity reserved for the Normandy invasion. There were no second chances here. A wrong choice could not be corrected until summer reruns, at best.

With the advent of VCRs and DVRs, all that changed. But the joy was short-lived, for we never foresaw the technology trap that was to accompany it. Like a diabetic trapped in a candy factory, too much of a good thing would soon kill us all.

So now, we sit with DVR, internet, On-Demand, NetFlix, Amazon Fire and the like, like a deer in the headlights. We know what is coming, but we have no idea what to do about it. There is too much content for one person to handle. Oh, the technology can handle it all, but we never once stopped to figure out that all this technology, no matter how big the pipeline or the storage, has to be funneled into one, very small mind. Ours.



We just can't handle all that entertainment. Our eyes tear, our head hurts, and there are only so many hours in the day, even if we do call in sick. There are no more "mental health days," only "clear my DVR days." The great fear we face now is that we won't live long enough to do so. Our DVRs will survive, however, silent repositories of television that was and could have been. Oh, and those wrong choices? They still lie in wait. We recall the decision we made not to watch "24" in real time. Now we have to take a year off to watch eight years of the series. Mistakes can be expensive.

In *Hermina v. 2050 Valentine Ave. LLC,* 2014 NY Slip Op 06367 (1st Dep't 9/25/14), the window in plaintiff's apartment fell on her hands while she was leaning on the window sill. In this action, defendants move for summary judgment, arguing that there was no requirement to periodically inspect the window balances (the counter-weights which hold the window up and prevent it from falling down on unsuspecting fingers.) But the world is not that simple, says the App Div, agreeing with plaintiff that there are triable issues of fact preventing the grant of accelerated judgment.

Those questions surround whether defendants, who owned and managed the building, were "aware of problems with the building's windows staying in an upright position[.]" Defendants could well be found to have constructive notice of the need for replacement of the window balances "based on the replacement of balances on a number of plaintiff's own windows, including the subject window, and on many of those elsewhere in the building prior to the accident."

The court holds that "[o]nce defendants knew that an appreciable number of the windows in the building required attention, they had an obligation to inspect all of them," citing *Candela v. New York City School Construction Authority*, 97 A.D.3d 507 (1st Dep't 2012), a case that reversed a defendants' verdict on precisely that issue. In *Candela*, a window in a new high school construction slid down unexpectantly and injured plaintiff. The problem was that the balances were broken, albeit by workers sliding the windows up past internal limit stops which then placed an unnatural burden on the spring balances which broke. The jury unreasonably ignored that defendants had previously identified —noticed— the condition which caused the injury.