Top 10 Real Estate Laws of 2019

By Andrew Lieb

By way of S6458, a 74 sine qua non of this year concerns the tenant’s right to a declaratory judgment against their landlord who has retained the use of such funds. The respondent alleged, *inter alia*, misappropriation of funds. However, the respondent did not know this conduct was unethical, and hence, the absence of harm. In mitigation, the respondent alleged, *inter alia*, that his wife suffers from debilitating medical issues, and that she is his primary caregiver. The parties acknowledged that the respondent had a prior discipline to criminal law. The parties acknowledged that the respondent had a prior discipline to criminal law. The parties acknowledged that the respondent had a prior discipline to criminal law. The parties acknowledged that the respondent had a prior discipline to criminal law. The parties acknowledged that the respondent had a prior discipline to criminal law. The parties acknowledged that the respondent had a prior discipline to criminal law.

Sawyer H. Cooper

Attorney disbarred/incapacity found

Suzann Grossman-Kerner: Motion by the Grievance Committee for a determination that the respondent was incapacitated from practicing law by reason of mental disability or condition granted.

Note: Ilene S. Cooper is a partner with the law firm of Farrell Fritz, P.C. where she concentrates in the field of trusts and estates. In addition, she is a past President of the Suffolk County Bar Association and past Trusts and Estates Law Section.
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our own collection of attorneys and judges charged with upholding the rule of law and everything this great nation stands for is the challenge. It is also what keeps us actively engaged in trying to make a mark, even a small one, towards that end and improving the quality of life for those whose lives we touch through our work.

One of the projects the Suffolk County Bar Association is working on this year is Restorative Justice, a full-day symposium on May 20, 2020. We have a large active group of attorneys and judges, working hard to bring this to fruition. We intend to invite every school superintendent in both Suffolk and Nassau counties. The genesis of this project is the proposed amendment to Education Law §3214 to provide alternative methods to addressing student disciplinary offenses, in lieu of school suspension. Studies have proven that when a child is more frequently suspended, he or she is more likely to commit adult crimes and find themselves incarcerated. The goal is to establish programs to maintain the student in school, while addressing the behavior in a constructive manner, to prevent future negative behavior and ultimately, to stem the “school to prison pipeline.” It would seem to benefit all of us to find better ways to turn a young behavior problem into a productive member of society rather than another prison statistic.

It strikes me as an interesting coincidence that our bar association has chosen this year to address these issues, and its underlying causes, at this particular time. A focus of the Restorative Justice project is addressing the incidence of “implicit bias” and how, whether on an individual or institutional level, this can affect our approach to certain litigants or our determination as to consequences or punishment for offenses. I do not know the answers, but these are the questions we need to ask ourselves.

Bias can come in many forms. We commonly think of bias as directed towards people of a different race, religion, color, sexual orientation, economic background or social strata. Perhaps, as human beings, we all suffer from some form of implicit bias. However, it is in being aware and recognizing the existence of these factors and being conscious of how they affect us in all that we do and in all of our institutions that is vital. We must be aware of the consequences of what we do, as lawyers and judges each day. The hope and goal of the Restorative Justice project is to shed some awareness and to find alternatives to the suspension of children from school when there may be a more productive approach. On a larger scale is the goal of preventing those biases from rearing its ugly head to the point of becoming unreasonable, irrational and dangerous and effecting how we treat each other, whether by allowing the rise of Anti-Semitism, or any other collective prejudice towards those that are different, or the removal of children from their parents or, conversely, allowing children to remain in abusive situations.

I would be remiss, however, not to mention the other side of the coin. I had the great privilege of attending the New York State Bar Association Annual Gala on January 31 held at the Museum of Natural History. It was a momentous, elegant evening, with 1000 guests held in the backlit aura of dinosaurs and mammoth elephants. The National Anthem was performed by the star of Hamilton on Broadway, a not so well kept secret. In attendance was an audience consisting of both Appellate Division justices and the New York Court of Appeals Justice, Chief Judge Janet DiFiore, New York State Attorney General Letitia James. However, the real treat was the attendance of Elena Kagan, Associate Justice of the Supreme Court of the United States. An informal chat was held with Justice Kagan, who I have no doubt impressed the entire audience as not only brilliant, but possessed of an enormous sense of humor, engaging personality and supreme dedication to her position and the awesome responsibility it entails. I will take the liberty of stating that, no doubt, in large part because she hails from New York! I was fortunate to be joined by many from Suffolk County, including United States District Court Judge Sandra J. Feuerstein, Family Court Judge Caren Loguercio, NYSBA President-Elect Scott Karon, past presidents John Gross, Harvey Besunder, Donna England and Jim Winkler, President-Elect, Judge Derrick Robinson, First Vice-President Dan Tambasco, Secretary Patrick McCormick and House of Delegate member Craig Parcell, as well as many others. I will say that, in speaking for myself and for all those in attendance, that it was a truly magical evening and one which confirmed our pride in being part of this great and proud profession of law.

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ment of jury selection and cited issues with his expert witness. Defense counsel opposed the request and moved to dismiss based on plaintiff’s failure to proceed to trial. The court offered plaintiff’s counsel the opportunity to proceed with jury selection that day and start the trial Feb. 6, 2017, or Feb. 7, 2017, and to allow the plaintiff’s expert witness to testify on Feb. 9, 2017. Plaintiff’s attorney responded that his expert witness was not available then, and that both he and defense counsel had trial the following week. The court granted the defendant’s motion to dismiss. Plaintiff then moved to vacate the dismissal and to restore the action to the trial calendar, arguing that he presented a reasonable excuse for failure to proceed to trial. In support of the motion, plaintiff submitted an affidavit from his expert witness stating she was unavailable for trial the week of Jan. 30, 2017, due to the scheduling of her patients. The court denied plaintiff’s motion stating that plaintiff failed to demonstrate a reasonable excuse for his default on Jan. 30, 2017. The Appellate Division, Second Department, affirmed the Supreme Court’s order, citing the following law: “Where a case is called for trial and one of the parties fails to appear or is unable to proceed, the trial court may (1) adjourn the trial to another date, (2) mark the case ‘off’ or strike it from the calendar pursuant to CPLR 3404, (3) vacate the note of issue pursuant to Uniform Rules for Trial Courts (22 NYCRR) 202.21(e), or (4) dismiss the complaint . . . pursuant to Uniform Rules of Trial Courts (22 NYCRR) 202.27.” Meledez v. Stack, 171 A.D.3d 726, 729 (2nd Dept 2019) (internal citations omitted).

Based on the foregoing law, the Meledez Court held that, “a court may dismiss an action when a plaintiff is unprepared to proceed to trial at the call of the calendar. In order to be relieved of that default, a plaintiff must demonstrate both a reasonable excuse for the default and a potentially meritorious cause of action. While public policy strongly favors the resolution of cases on the merits, a determinative of whether an excuse is reasonable lies within the sound discretion of the Supreme Court. Here, the Supreme Court prov- idedly exercised its discretion in dismissing the action, because the plaintiff failed to demonstrate a reasonable excuse for why he was unprepared to proceed to trial on Jan. 30, 2017. The plaintiff’s expert did not state that she was unavailable to testify on Feb. 9, 2017, as offered by the court and did not address whether the plaintiff’s attorney had asked if she was available to testify during the second week in February. Although an expert witness’s unavailability may provide a reasonable excuse for a party’s inability to proceed to trial (see Vera v. Soohoo, 99 A.D.3d at 992), under the circumstances here, it cannot be said that the plaintiff suf- ficiently established the unavailability of the expert witness.” Meledez v. Stack, 171 A.D.3d 726, 729-730 (2nd Dept 2019) (internal citations omitted).

Trial counsel seeking an adjournment based on the unavailability of an expert witness should be armed with as much detail as possible regarding the witness’s unavailability and the merits of the cause of action. The more detail counsel can provide, including dates the expert is available (as opposed to unavailable), the more likely the court will find counsel’s excuse reasonable and grant the adjournment. Counsel should also remind the client that an adjournment is not guaran- teed, and the court has discretion to dismiss the case if counsel refuses to proceed to trial. If the court denies a request for an adjournment, it will likely be in the interest of the client to proceed without the unavailable expert witness, lest the case be dismissed without ever being tried.

Note: Paul Devlin is associate at Gentile & Tambasco where his practice focuses on personal injury litigation. He is an active member of the SCBA serving on the Board of Directors and as co-chair of the Membership Services & Activities Committee. He may be reached at (631) 760-0923.

10. Nondelegable Duty to Maintain Under Code and Out-of-Possession Landlord: In Xiang Fu He v. Room Management, Inc., the Court of Appeals held that a cod- ified duty to maintain abutting sidewalks could not be transferred to a tenant. As such, out-of-possession landlord remains exposed to potential liability for slip and fall injuries on their property.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Smithtown and Manhasset. He is a past co-chair of the Real Property Committee of the Suffolk Bar Association and has been the Special Section Editor for Real Property for The Suffolk Lawyer for years.