



MondayMonday

A Tale of Snow And Ice Ends

September 2, 2013

We mourn the death of a dear old friend this week, Gus, the polar bear at the Central Park Zoo. In the days when our children could be entranced by such simplicities (and many of them still can,) Gus, the king of the zoo, sat in the middle of the greatest city in the world and innocently presented himself to over 20 million people in a static, but never boring, water ballet.

Something about Gus reminded our children of their father. Perhaps, it was just because Gus was, ahem, rather large. But that wasn't all of it. There was Gus' swimming. The First Child said Gus liked to swim because he was large and swimming made him happy; The Rose said that watching Gus swim was like watching Daddy swim; and the Heir to the Throne said swimming with Gus would be like swimming with Daddy.

They were all right. We and Gus had something in common. The God that made us both had made us large while, at the same time, creating oceans and pools in which we could be weightless, elegant and lithe. We understood Gus, if no one else did, and could watch him swim endlessly (the zoo thought he was just bored) while



reveling in his comfort and joy. On land, Gus lumbered; in the water, he flowed.

Gus died last Wednesday at 27, outliving not one, but two wives. (No wonder he swam so much.) We live on, sharing Gus' love for the water that makes us both ethereal. Swim on, old friend.

The long journey of Katie Sarisohn and her slip and fall in a snowy CVS parking lot in Commack ended this week with summary judgment against the snow removal contractor being affirmed by the Second Department. It was seven years ago that Katie, stepping over a mound of snow and ice from the sidewalk surrounding the CVS into the parking lot, slipped and fell. It took a lot of lawyering to overcome a motion court which had initially granted summary judgment to the property owner and the owner of the CVS [*Sarisohn v. Commack Road, Inc.*, 2009 WL 646139 (S.Ct., Suffolk Co. 2009)]. In a case with which we have some familiarity, the Second Department reversed Supreme Court, writing a comprehensive decision

which discussed the obligations of property owners and tenant business owners to the general public when it comes to snow and ice removal. *Sarisohn v. 341 Commack Road, Inc.*, 89 A.D.3d 1007 (2d Dep't 2011) ["A tenant has a common-law duty to remove dangerous or defective conditions from the premises it occupies, even though the landlord may have explicitly agreed in the lease to maintain the premises and keep them in good repair."]

Now, in *Sarisohn v. Plaza Realty Servs., Inc.*, 2013 NY Slip Op 05741 (2d Dep't 8/28/13), the snow removal contractor justifiably bears the burden of summary judgment. The snow removal contract was about as comprehensive as one could imagine [*Espinal v. Melville Snow Contrs.*, 98 N.Y.2d136 (2002)] , as confirmed by the contractor's own principal. Coupled with removal of some of the snow and ice prior to plaintiff's fall, but not the removal of snow and ice from the sidewalk until the following day, the die was cast.

The story of tenacious personal injury attorneys is commonplace in our profession. We merely highlight one this morning to prove the point.

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