

AN AFTERNOON IN A CITY PART; Essay

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Body

Essay

THE JUDGE HAD BEEN recently promoted to Acting Supreme Court status in order to manage a City Part, a court part that had been established to deal with the proliferation of personal injury claims brought against the City of New York. He sat with his law secretary in a musty, sparsely furnished room at the old courthouse located at 80 Centre Street in lower Manhattan. All afternoon, plaintiffs' lawyers were ushered into the room to plead their cases before a representative of the Corporation Counsel, the legal arm of the City of New York and another from the Comptroller's office, the keeper of the City's fisc. The judge, believing that a vigorous, hands-on negotiating style would produce the most settlements, had spent the better part of the afternoon being told by the Comptroller's representative that the presented cases were respectively garbage, a lot of crap, sanctionable to the plaintiff's attorney, and in any event, dismissable as a matter of law.

Knowing how court administrators scanned settlement figures with great interest, the recently elevated judge noted with some anxiety that only two cases remained for discussion out of the original 20 on the calendar that afternoon.

Listen, said the judge, I haven't settled one case today.

Judge, Judge, said the Comptroller's representative, the demands are outrageous. What do you expect from us? We can't bid against these outrageous demands.

But look, said the judge trying to mollify the representative who was reaching for the telephone to answer entreaties from judges all over the city, we depend on settlements in this system. I can't run a part if all these cases have to be tried.

Judge, Judge, said the representative, you wouldn't want us to settle phony cases, would you?

All right, said the judge, realizing he was getting nowhere with his pleas; let's see if we can get at least one or two settlements before the day is over.

We stand ready to cooperate with the court, your honor, you know that.

The judge nodded to his court officer, who opened the door to the courtroom and shouted out the name of the next case on the calendar. Reynolds against the City.

Here, ready, said the portly lawyer, beads of sweat appearing on his brow as he made his way to the front of the room.

Plaintiff's over here, said the officer in a commanding voice, pointing to the side of the table to the judge's left.

Charles Buckland

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Joe, how are you? said the Comptroller's representative. What have you got for us today?

Trip and fall on a cracked sidewalk. Torn rotator cuff. Decent recovery and before you say anything Benny, said the lawyer looking at the Comptroller's representative, here's my Big Apple notice.

You anticipated my question, said the representative, glancing at the papers handed to him.

What are you looking for, Jack? said the representative. I want to settle one for the judge here.

Look, Benny, you and I know each other. You know I don't play the bullgames the way other plaintiff's lawyers do.

How much, Jack? said the representative impatiently.'

Between you and me, I need 75, Benny, bottom line.

Jack, Jack, said the representative. Be serious. Look, let me talk to the judge for a moment. Jack, would you please step out. The lawyer started to gather up his papers. Jack, leave your papers, we wouldn't think of looking through your file, smiled the representative.

The lawyer left the room and the judge was left to learn what the representative and his trial attorney from the Corporation Counsel's office had in mind.

Judge, I want to give you a few settlements but his number is really too high. Jack knows it, too.

Probably a bit too high. I'd say 60, said the judge.

Oh Judge, said the representative. The case has problems.

What? Notice is good.

Judge, I'm going to let you in on a little secret, but you gotta promise not to tell.

OK, what's that.

This guy has a long criminal record. At least four arrests in the last five years.

OK, OK, said the judge. How much are you offering?

Judge, for you and because we respect you I'm giving you 40 to settle this case but try to save us some of it.

THE JUDGE SLOWLY got up, opened the door to the courtroom and beckoned the plaintiff's lawyer to the side.

Listen, said the judge looking intently at him. I think they want to settle the case but your number is really too high.

Well, what are they prepared to pay? said the lawyer.

Look, before I discuss that, said the judge, I think there are problems with your case.

Like what? said the lawyer.

Like your guy is a con, said the judge.

That can't come in, Judge.

Well, sometimes evidentiary issues have a way of fooling you, warned the judge. And, said the judge, he made a good recovery.

I said that at the beginning, Judge, that's why I asked for 75.

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Look, said the judge. They offered 25. I know it's not great but you ought to consider it.

Look, Judge, they're taking advantage of me. Between you and me, I'd rather not try this case. I've had trouble locating my client.

Judge, look, I don't want to be a chazza. Try to get me 50, pleaded the lawyer.

I'll try, said the judge, but I can't promise they'll move that high. I think there's some possibility of movement but not that much.

The judge closed the door behind him and with his back against the wall looked right at the redoubtable representative of the City's fisc.

Benny, I've done everything I could but I think I need a little extra.

What is he looking for? asked the representative cautiously.

He said he'll take 55 but I think I could press him at 45.

Judge, 40 is a gift. That's it. Tell him take it or leave it. I'm not going to be held up by some shyster representing a felon.

Wait a minute, said the judge. The point is to settle cases.

It is, your honor, but it's not our obligation to be held up.

The judge went back into the courtroom and quickly acknowledged the plaintiff's lawyer.

Any luck? asked the lawyer.

A little, said the judge. I've got him up to 35 but he said if I come back in and ask for a dime more, the offer is withdrawn. He said for me to tell you he's only doing it because he thinks you're such a straight shooter.

Judge, can you get me five more, please. I think there's a lien somewhere. I want my client to get something. I'm even cutting my fee.

Look, said the judge. I think you should get 10 more but you know Benny. If you want a trial, I'll give you a trial but I'm tapped out with him. 35 Take it or leave it.

Settled, said the lawyer. Will you speak to my client when I find him?

Sure, said the judge. Let's go inside.

THE JUDGE OPENED the door; the lawyer followed him. The Comptroller's representative cocked his head away from the telephone receiver he was holding.

Settled for 35, said the judge.

You drive a hard bargain, counselor, said the Comptroller's representative, marking the next-to-last case of the day on his sheet, settled.

Well, Judge, how many more cases do we have?

One, said the judge. Let's see if we can go two-for-two.

The judge nodded wearily to his court officer who left the room to call out the last case of the afternoon.

The officer returned to the anteroom followed by a middle-aged attorney carrying a well tattered case file. The judge took the yellow case card and looked it over trying to recollect something about the case that would help in settlement.

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Let's see, said the judge. It's a fractured ankle.

Right, said the plaintiff's lawyer.

Closed reduction too, said the medically astute jurist.

Let me see your notice, broke in the Comptroller's representative. Give me a copy of the face sheet of the hospital report too.

There was only emergency room treatment, Benny, said the lawyer.

The Comptroller's representative took the papers handed to him as well as four or five Polaroid snapshots and studied them carefully.

This isn't our case, roared the representative.

Look here, he said. The crack is right on top of the last stair of the subway steps. The TA should be on the case. Serve a third-party complaint on them right away, directed the representative to a young assistant corporation counsel assigned to try this case who was eagerly sopping up this wealth of practical experience.

Hold on, said the judge. This case is marked final for trial three times. There's no time left for third-party action.

Judge, Judge, we don't pay on phony cases or cases that are not ours, said the representative.

The judge motioned to the plaintiff's lawyer to follow him outside the room. When they were out of hearing range from the City's entourage, the judge turned to the plaintiff's lawyer and said:

He's right you know. You screwed up. It's the TA's case. The city's not in it.

I'm not sure about that, said the lawyer. Look over herethe cut extends to the sidewalk.

Yeah, but you have no prior written notice, said the judge.

I don't need it, said the lawyer. The city had an affirmative obligation to repair.

I don't know what you're talking about, said the judge.

Judge, look. Just get me a little and I can settle the case. I can't walk away with nothing.

The judge said nothing but walked inside to confront the representative.

I can get this case to go away for \$5,000. That's a bargain, said the judge.

Judge, Judge, how can you ask me to pay \$5,000 on this case? He's got a lot of nerve to sue us on this case; a lot of nerve to tax our scarce resources.

Look Benny, let's concentrate on getting rid of some cases. You only settled one this afternoon you know.

Judge, look, because it's you and you know how much I respect you, I'll give you \$1,500 to settle the case.

Benny, I know I can't get it to go away for that amount.

Beyond that, it's a hold-up.

Look, Benny, I got five thousand in the bank with you; let's use it now, said the judge toughening his resolve.

Judge, Judge, there's no bank. We evaluate each case on the merits and this case has none. Listen, I've got to run but I'll call you in a month. Maybe we'll be luckier then and have a few more to settle.

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And, as quickly as the Comptroller's representative darted out the door, the judge slowly put together all the 20 or so scattered yellow calendar cards on his desk, noted the figure 1 on his tally sheet which reflected his day-to-day progress in the Part and wondered how this turn of events would be viewed by the court administrators who had recently elevated him and who kept a keen eye on these matters.

aDavid B. Saxe, a State Supreme Court justice, sits in New York County.

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