UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Roderick Webber, Pro Se Plaintiff, v)	Case 1:18-cv-00931-LM
Donald J. Trump, Edward Deck et al.)	(Chief Judge Landya McCafferty)
Defendants.)	July 12, 2019

REPLY MEMORANDUM TO DEFENDANT JPA III'S MOTION TO DISMISS

PARTIES

Defendants Donald J. Trump for President, Inc. ("Trump Campaign"), Edward Deck, and Fred Doucette have collectively referred to as the "Campaign Defendants." Defendants Pittman, Cosio, Craig and Aldenberg and City of Manchester, (collectively referred to as "Manchester Defendants.") Trump Organization, LLC and The Trump Organization, Inc. together, collectively referred to as "Trump Companies," (except Trump Companies refer to themselves as "Trump Organization Defendants" in their motion. XMark, LLC (Arizona) and XMark LLC (North Carolina), collectively referred to as "XMark Companies." A clerical error resulted in two paragraphs called Paragraph 55 in Second Amended Complaint, (Doc 75., 05/22/2019). For simplicity, they will be referred to as 55a and 55b respectively.

STANDARD OF REVIEW

The Supreme Court has held that to survive a motion to dismiss under Federal Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim has "facial plausibility" when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the

defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. at 678. Wells v. West Georgia technical College, 2012 WL 3150819, (N.D. Georgia August 2, 2012). (“the complaint’s factual allegations must be enough to raise the right to relief above the speculative level, *i.e.*, enough to make the claim plausible.”) Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (quoting Twombly, 550 U.S. at 555, 570). This "plausibility" standard is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. at 678.

The Supreme Court has specifically indicated that determining whether a complaint states a plausible claim for relief under this standard is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Ashcroft v. Iqbal, 556 U.S. at 679. The Second Circuit has held that where there are two plausible inferences that may be drawn from the factual allegations in the complaint: "A court ruling on such a motion may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162, 185 (2d Cir. 2012), cert. denied, 133 S. Ct. 846 (2013). Thus, "[t]he question at the pleading stage is not whether there is a plausible alternative to the plaintiff's theory; the question is whether there are sufficient factual allegations to make the complaint's claim plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 189. The Second Circuit further explained that although one plausible interpretation of “defendant's words, gestures, or conduct” is innocuous does not mean that plaintiff's allegation that that conduct was culpable is not also plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 189-90.

Likewise, "in determining whether a complaint states a claim that is plausible, the court is required to proceed 'on the assumption that all the [factual] allegations in the complaint are

true[,'] [e]ven if their truth seems doubtful." Anderson News, L.L.C. v. Am. Media, Inc., 680 F. 3d 162 at 185 (court's emphasis) (quoting Twombly, 550 U.S. at 556). Because the plaintiff is entitled to the benefit of the doubt, "it is not the province of the court to dismiss the complaint on the basis of the court's choice among plausible alternatives"; rather, "the choice between or among plausible interpretations of the evidence will be a task for the factfinder," assuming that the plaintiff "can adduce sufficient evidence to support its factual allegations." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 190.

In his second amended complaint, Plaintiff has alleged specific facts supporting each element of the causes of action pled drawing a reasonable inference that the Defendants are liable for the misconduct alleged. Plaintiff's allegations are also supported by transcribed videotapes of the incident in the appendix to the complaint as well as other research and documentation.

NEGLIGENCE

In their motion Defendant JPA III Management Company, Inc. (JPA III) contends the Plaintiff has failed to show that the Defendant intended to cause harmful or offensive contact to the plaintiff. Defendant JPA III further contends that Plaintiff has failed to plead any facts from which it could be concluded that JPA III took any part in the alleged assault.

Clearly in cases of negligence, intent is not required. In cases of negligence, the Plaintiff must merely allege that the Defendant had a duty, and that a reasonable person could find that the Defendant breached that duty, that Defendant's actions proximately caused injury to the Plaintiff, and that as a result of that breach Plaintiff suffered damages.

As stated in the Second Amended Complaint, "Defendants owed a duty of ordinary care

to keep the Plaintiff safe from assault and battery while attending the No Labels Problem Solvers event." Doc 75. at ¶ 134. Due to Defendant Deck's previous history of assaults and batteries, Defendant JPA III, "should have been aware that Defendant Deck and Trump Campaign security and Trump supporters were prone to commit assault and battery on any person they perceived to be opposed to Defendant Trump." *Id*. at ¶ 135. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53. Defendant JPA III owed a duty of care to prevent these torts. Defendant JPA III, "breached that duty of care and their breach proximately caused the Plaintiff's injuries." *Id*. at ¶ 134.

In this case, Plaintiff has properly alleged all of the elements of negligence and the Defendant's motion to dismiss is without merit. Plaintiff has included evidence of negligence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

DUTY OF CARE

Defendant JPA III contends that Plaintiff has failed to show that JPA III owed him a duty of care.

New Hampshire has long held that owners of property or landlords may be held negligent for failing to protect visitors and invited guests from foreseeable hazards and dangers. "A proprietor has a duty to invitees to exercise reasonable care for their protection." Burns v. Bradley 419 A.2d 1069 (N.H. 1980). Pridham v. Cash Carry Bldg. Center, Inc., 116 N.H. 292, 294, 359 A.2d 193, 195 (1976); W. PROSSER, THE LAW OF TORTS 61, at 392 (4th 1971).

More specifically, owners of property and landlords have a duty to protect visitors and invited guests from foreseeable hazards and dangers of third parties. "The assumed fact that the

contractor knew of the peculiar danger connected with the plaintiff's situation is immaterial. The duty imposed by law upon the defendant, as the owner and occupier of the premises, for the reasonable protection of its invitee, is not performed by an attempted delegation of it to a third party. It is a non-delegable duty, arising from the proprietor's control of the premises (Woodman v. Railroad, 149 Mass. 335, 340); and "where the duty sought to be enforced is one imposed by law upon the defendant, he cannot escape liability by showing that he employed another, over whom he had no control, to perform it for him." Pittsfield etc. Co. v. Shoe Co., 71 N.H. 522, 530. "He may bargain with the contractor that he shall perform the duty, and stipulate for an indemnity from him if it is not performed, but he cannot thereby relieve himself from liability to those injured by the failure to perform it." Dalton v. Angus, 6 App. Cas., 740, 829; Rolfe v. Railroad, 69 N.H. 476; Cabot v. Kingman, 166 Mass. 403, 406; Engel v. Eureka Club, 137 N.Y. 100, 104; 1 Shearm. Red. Neg., s. 176; Cool. Torts 547.

Additionally, New Hampshire Courts have ruled that property owners can be held negligent for acts of third parties, so long as there is foreseeability of criminal behavior.

“A third exception is the existence of overriding foreseeability. Some courts have held landlords to a duty to protect tenants from criminal attacks that were clearly foreseeable, even if not causally related to physical defects on the premises.” Walls v Oxford Management Co., 137 N.H. 653, 659 (N.H. 1993)

“Particular circumstances can give rise to such a duty. These circumstances include when the opportunity for criminal misconduct is brought about by the actions or inactions of the owner or where overriding foreseeability of such criminal activity exists." Iannelli v. Burger King Corp. 761 A.2d 417 (N.H 2000).

“Landowners (like McDonald's) bear liability for criminal attacks occurring on their

premises where `the opportunity for criminal misconduct is brought about by the actions or inactions of the owner or where overriding foreseeability of such criminal activity exists.' Vandemark v. McDonald's Corp., 153 N.H. 753 (N.H. 2006).

New Hampshire law and the common law of Negligence clearly provides that owners of property or landlords have a duty of care that extends to acts of third parties. This duty continues to extend to landlords and property owners regardless of whether they rent the premises or not. If there was foreseeable danger by a third party, and a reasonable person could find that their injuries were the proximate cause of this breach, then the landlord or property owner is negligent. And where Landlords or property owners rent large event centers, auditoriums, or stadiums for public or private events for thousands of people their duty to the public or to invitees increases rather than diminishes.

Other jurisdictions have ruled that property owners can be held negligent even for the negligent acts of third persons.

"[A]n owner and occupier of land breaches his duty to invitees who are injured by the negligent acts of third persons, where such owner and occupier fails to exercise reasonable care to discover that such negligent acts of third persons are being done or are likely to be done and fails to give a warning adequate to enable such invitees to avoid harm, or fails to act to protect such invitees against such negligent acts of third parties." Martin v. Lambert 8 N.E.3d 1024 (Ohio Ct. App. 2014); Cassano v. Antenan–Stewart, Inc., 87 Ohio App.3d 7, 9–10, 621 N.E.2d 826 (12th Dist., 1993), quoting Holdshoe v. Whinery, 14 Ohio St.2d 134, 43 O.O.2d 240, 237 N.E.2d 127 (1968), paragraph four of the syllabus."

"Even when proprietors . . . have no duty . . . to provide a security guard or undertake other similarly burdensome preventative measures, the proprietor is not necessarily insulated

from liability under the special relationship doctrine. A proprietor that has no duty . . . to hire a security guard or to undertake other similarly burdensome preventative measures still owes a duty of due care to a patron or invitee by virtue of the special relationship, and there are circumstances (apart from the failure to provide a security guard or undertake other similarly burdensome preventative measures) that may give rise to liability based upon the proprietor's special relationship." (Delgado, supra, 36 Cal.4th at pp. 240–241.); 1005. Business Proprietor's Liability for the Negligent/Intentional/ Criminal Conduct of Others.

"If the reasonably prudent person would foresee danger resulting from another's voluntary criminal acts, the fact that another's actions are beyond defendant's control does not preclude liability." Trentacost v. Brussel, 82 N.J. 214, 222 (1980)); "criminal activity apparent in plaintiff's neighborhood"; Holley v. Mt. Zion Terrace Apartments, Inc., 382 So.2d 98, 100 (Fla.App. 1980); (apartment complex plagued by high incidence of serious crime); Kline v. 1500 Massachusetts Avenue, 439 F.2d at 483; (Crimes perpetrated against tenants in common area of apartment complex); Johnston v. Harris, 387 Mich. 569, 573-74, 198 N.W.2d 409, 410-11 (1972); Faheen, 734 S.W.2d at 273. - Walls v. Oxford Management Co. 137 N.H. 653, 659 (N.H. 1993).

Some jurisdictions have found property owners or municipalities liable where lessees have invited criminal third parties onto the premises.

"Holding a county owed a duty of care to injured motorists after a bus driver exited his bus with the keys in the ignition and the engine running, and left an obviously violent and disturbed individual unsupervised on board. '¶21 Accordingly, Washington cases finding the existence of a duty to guard against the criminal conduct of a third party have generally been based on reasons other than the foreseeability of such conduct. As the court in Kim explained,

such cases have, instead, justified the imposition of such a duty based on the existence of a "special relationship' between either the actor and the victim, or between the actor and the criminal third party. Kim, 143 Wn.2d at 196-97; see, e.g., Nivens v. 7-11 Hoagy's Corner, 133 Wn.2d 192, 943 P.2d 286 (1997) (business owed duty to invitee to protect against criminal conduct of third party); Hertog v. City of Seattle, 138 Wn.2d 265, 979 P.2d 400 (1999) (state owed duty to individual harmed by the criminal conduct of probationer under state's supervision)." Parrilla v. King 157 P.3d 879 (Wash. Ct. App. 2007)

"Plaintiffs alleged that that their son was intentionally stabbed and killed by criminal third parties and Haverfield's negligence was the direct and proximate cause of their son's death. Plaintiffs and Haverfield waived a jury trial and liability was not contested. The court found that Haverfield negligently failed to protect Michael Hunt, Jr. 'from his assailants, who were known dangerous, intoxicated patrons on Haverfield's premises; and that Haverfield negligently failed to remove these patrons from said premises after prior similar violent acts by these patrons against other persons on said premises.' The court further found that Haverfield's negligent acts were the direct cause of Michael Hunt, Jr.'s death. The court entered judgment in favor of plaintiffs for $150,000." Hunt v. Capitol Indemnity Corporation 26 S.W.3d 341 (Mo. Ct. App. 2000)

In this case, it is clearly an issue of fact for a jury or factfinder whether Defendant, under the totality of the circumstances, exercised due care and whether Plaintiff's injuries and damages resulted from Defendant's breach of that duty. However, at this juncture, Plaintiff has clearly alleged a set of facts where a jury or factfinder could determine, in the light most favorable to the Plaintiff, the following elements consistent with a finding of negligence:

a) Defendant is the owner of a large hotel/event center with a 6,432 person auditorium that Defendant rented, leased, or lent to Defendant No Labels for an event which expected 2000

attendees that was open to the public and/or to private invitees.

b) A 2014 PDF containing contracts and other legal documents between Defendant JPA III and the Department of Safety, Division of Homeland Security and Emergency Management (HSEM) was published on the New Hampshire Secretary of State page. The documents detail preparations for a one day training conference called the 10th Annual Emergency Preparedness Training Conference, to be held at the Radisson Hotel, Manchester, with an expected attendance of 700 people on June 11, 2014.

Part of the contract stipulates the amount and kind of liability insurance JPA III would expect HSEM to carry for this event, stating, "The contractor shall, at its sole expense, obtain and maintain in force the following insurance: 14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $250,000 per claim and $2,000,000 per occurrence." *sos.nh.gov/WorkArea/DownloadAsset.aspx?id=52117*

It is therefore clear that Defendant JPA III could foresee the possibility of bodily injury, death or property damage with an event that only expected 700 attendees. The No Labels Problem Solvers event was estimated to be almost three times that amount of people, (at 2000), with invitees holding disparate views being prompted to "hold the candidates feet to the problem solving fire." Any reasonable person could foresee that this powder-keg would lead to conflict and possible torts. SEE EXHIBITS: JPA/ HSEM CONTRACT

c) Defendant had a duty to make a safe environment or premises for attendees on their property. Defendant had a duty to manage, oversee, organize or direct the security of a large event on the property that they own. Defendant has security personnel or managers and has or should have security plans or operations for this large property and event center even when

leased, rented, or lent. Defendant is not absolved of that duty by merely renting, leasing, or lending the property to Defendant No Labels or any other entity.

Defendant may have or did hire the Defendant police officers. Defendant did or may have organized or managed security for the event. Defendant may have or did recommend or advise Defendant No Labels about the security of the event.

d) Defendant knew or should have known that possibly violent or dangerous persons such as Defendant Donald J. Trump, Trump supporters, Defendant Edward Deck, Keith Schiller, Trump Security and other possibly dangerous or violent individuals may or were going to be present on their property. Said individuals have a history of violence and/or torts, assaults, and/or batteries and/or incitement to violence. (In addition to the history of violence of said individuals alleged in the complaint, a federal district court has held that "studio wrestling" such as produced by WWE and as participated in by Defendant Trump and his security chief, Keith Schiller, is real violence and can cause serious and permanent injuries). On June 22, 2009 Defendant Trump struck a man in the face. On July 19, 2011, Defendant Trump tackled a man and punched him in the face at least five times, while other wrestlers at the same event beat each other to bloody messes. On Dec 8, 2013, Defendant Trump pushed a man over a table, mirroring Defendant Deck's Oct 12, 2015 attack on Plaintiff. Once Defendant Trump shifted his focus to his campaign, the acts of violence shifted to incitement of violence, so that Defendant Trump could presumably be held blameless. Schiller is known to have bragged about using "his gut" rather than logic as chief of security for The Trump Organization, and has bragged about the various kinds of violence he has committed in that role. Defendant knew or should have known that violence and/or torts were foreseeable with such a persons at the event and on their property. SEE APPENDIX 1

e) Defendant knew or should have known that police officers from the Manchester Police Department were going to be present at the event. Members of the Manchester Police Department have had a history of violence, police brutality, and torts in the past. APPENDIX 4: MANCHESTER POLICE TRACK RECORD, APPENDIX 5: RETALIATORY ARREST

f) Defendant knew or should have known that Defendant No Labels may not have been or were not experienced or professional or incapable of organizing security or safety at such an event.

g) Defendant knew or should have known that persons of different and/or opposing political, social, economic, ethnic, racial, and cultural identities and affiliations may or were going to be present at the event. Defendants knew or should have known that violence and/or torts were foreseeable with such persons or crowd gathered on Defendant's property.

h) Defendant knew or should have known that four Manchester police officers were or may have been insufficient for the anticipated assembled crowd of one to six thousand persons. Defendants knew or should have known that four Manchester police officers were the wrong choice for security for the event due to the Manchester Police Department's history of violence and/or torts. APPENDIX 4: MANCHESTER POLICE TRACK RECORD, APPENDIX 5: RETALIATORY ARREST

i) Plaintiff was an invited guest at Defendant No Labels event. Defendant attempted to ask a question of Defendant Trump.

j) The Defendant police officers and Defendant Trump's alleged security including Defendant Deck were unable to provide security or protect or make the environment safe for Plaintiff, an invited guest who merely asked a question, but rather were the individuals who brutally and with malice assaulted and battered Plaintiff and then falsely arrested and imprisoned

Plaintiff for attempting to file a complaint against the Defendants and for asserting or attempting to assert his rights as protected by the U.S. Constitution and federal statute.

k) Plaintiff, an invited guest, suffered injuries and damages as a proximate cause of Defendant's failure to provide or manage adequate security or a safe environment on Defendant JPA III's property.

l) On September 3, 2015, Trump security officer Keith Schiller forcibly ripped signs away from protesters at Trump Tower and punched one in the face, with the assistance of Defendant Edward Deck. This created national headlines. Since JPA III/ the Radisson Hotel was hosting an event with Donald Trump speaking, they should have been aware of this. SEE APPENDIX 1

m) There have been dozens of violent and tortious incidents occurring at Radisson Hotels throughout the Radisson Hotel franchise ranging from massive swarms of protesters arriving at the Radisson Hotel in Manchester, requiring police to be called to the scene, to patrons falling down drunk, to arrests for molestation to murder,to gambling, to prostitution, to hostages being taken, and other torts too numerous to list. SEE APPENDIX 2: RADISSON FRANCHISE

Accordingly, New Hampshire law and the common law of negligence provide that Defendant JPA III owed a duty to the Plaintiff. Likewise, Plaintiff has alleged sufficient facts providing that Defendant may have breached that duty and that a reasonable person could find that said breach was the proximate cause of his injuries. JPA III knew or should have known that Defendant Trump and his violent associates were coming, and that it was foreseeable that violence would occur against one of their invited patrons.

The event presumably was bringing in hefty profits for JPA III, however, they did nothing, they planned nothing, and failed in their duty to provide a safe environment for invitees,

despite having held much smaller events in the past for which they required their contractors to be insured with comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $250,000 per claim and $2,000,000 per occurrence.

In not properly managing the security for the large 6000 person capacity venue with 2000 expected and rented for a political event open to the public which included foreseeable violent or dangerous guests, JPA III was negligent in their duty to Plaintiff. JPA III had a duty to make sure lessee had hired appropriate security under the totality of the circumstances, however, in this duty, JPA III failed to ensure that lessee had obtained professional and adequate security. Instead, lessee merely hired four off-duty police officers from The City of Manchester Police Department, known for their bar brawls, their violent acts of assault, their vehicular hit-and-runs, their retaliatory arrests, and the accusations of sexual assault leading to large financial settlements.

With all of the crimes by The City of Manchester Police Department so frequently in the news, certainly JPA III must have been aware that their officers were not suitable security for the event, and had the potential themselves to become tortfeasors. Clearly, from the evidence, there were dangerous and criminally known tortfeasors present and attending. The security hired were insufficient and were even possibly improperly trained and incapable of providing security for a single person asking a question without committing a crime or multiple torts. That is certainly enough for the factfinder to determine that under the totality of the circumstances the lessor has not fulfilled their duty and was negligent. SEE APPENDIX 4: MANCHESTER POLICE TRACK RECORD, APPENDIX 5: RETALIATORY ARREST

REFERENCE

Many of the same issues are found and argued in many of the replies and motions, and so for economy please reference them.

CONCLUSION

New Hampshire and other jurisdiction law is clear, the owner of property does have a duty to prevent violent acts by third parties when they lease out a large event space. Their duty is not absolved simply because they assert it is. In fact, their negligence increases by their intentional carelessness and ignorance. Therefore, viewing the allegations in the manner most favorable to the Plaintiff, Plaintiff has stated a claim for which relief could be granted. Plaintiff, hereby, asks this court to deny Defendant's Motion To Dismiss and, thereby, enable Plaintiff to discover further facts and evidence when presented to the jury would demonstrate that Defendant is liable for negligence.

Signed_Rod Webber

Roderick Webber

July 12, 2019