

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Roderick Webber,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:18-cv-00931-LM
)	(Chief Judge Landya McCafferty)
Edward Deck, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANT, JPA III MANAGEMENT COMPANY, INC. D/B/A RADISSON HOTEL
MANCHESTER'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1)**

Defendant, JPA III Management Company, Inc. d/b/a Radisson Hotel Manchester, by counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves to dismiss the Second Amended Complaint of Plaintiff Roderick Webber. In support of its Motion, the Defendant submits the accompanying Memorandum of Law.

Respectfully submitted,

JPA III Management Company, Inc.
d/b/a Radisson Hotel Manchester
By its Attorney,

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Dated: June 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed a copy of the foregoing with the Court via electronic filing, which will serve all counsel of records, and *pro se* Plaintiff, Roderick Webber.

Dated: June 3, 2019

/s/ Christian H. Hinrichsen

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT, JPA III MANAGEMENT COMPANY, INC. D/B/A RADISSON HOTEL MANCHESTER’S MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED COMPLAINT

Defendant JPA III Management Company, Inc. d/b/a Radisson Hotel Manchester (“Radisson”), by counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiff Roderick Webber’s Second Amended Complaint for Failure to State a Claim.

INTRODUCTION

Webber asserts that he was physically assaulted by Edward Deck (an employee of Donald J. Trump for President Campaign, Inc.), three officers of the Manchester Police Department, and Fred Doucette (a New Hampshire State Representative). Second Amended Complaint ¶¶ 41–57. The alleged incident occurred on October 12, 2015 at an event hosted by Defendant No Labels, a 501(c)(4) organization, at the Radisson Hotel in Manchester, when Webber attempted to question Trump, who was speaking at the event. *Id.* at ¶¶ 33, 40. Although the Second Amended Complaint asserts 18 total claims against numerous defendants, only one claim is alleged against the Radisson: Negligence (Fourth Claim for Relief). Webber specifically

contends that the Radisson breached its duty of care because it failed to provide adequate security and “protect [him] from foreseeable assault, battery and other intentional and actionable torts.” *Id.* at ¶¶ 137. But Webber has failed to plead with specificity facts from which it could be concluded that the Radisson owed him a duty of care in the first place. Hence the Radisson is entitled to dismissal of Webber’s sole claim against it.

STANDARD

To survive a motion to dismiss, a complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007). It must also contain “more than labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007). *See also Carideo v. PennyMac Loan Services, LLC*, 2019 DNH 025 (applying *Twombly* and partially dismissing complaint).

ARGUMENT

Webber has failed to show that the Radisson owed him a duty of care.

Webber would have the Radisson stand trial for an assault allegedly committed by individuals who were not and are not its alleged employees or agents, solely on the basis that it should have known that the President, members of his security team, and supporters “were prone to commit assault and battery on any person they perceived to be opposed to Defendant Trump.” Second Amended Complaint at ¶¶ 135. In order to maintain a claim for negligence, Webber must show that the Radisson owed him a duty of care. This he has not done.

In New Hampshire, “persons owe a duty of care only to those who are foreseeably endangered by their conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous.” *Manchenton v. Auto Leasing Corp.*, 135 N.H. 298,

304, 605 A.2d 208 (1992). The standard of care against which a defendant's conduct is measured "is essentially an objective one," *Bernard v. Russell*, 103 N.H. 76, 77, 164 A.2d 577 (1960), and "is defined as how a reasonable man might act under the same circumstances," *Gelinas v. Metropolitan Prop. & Liability Ins. Co.*, 131 N.H. 154, 161, 551 A.2d 962 (1988). "A defendant will not be held liable for negligence if he could not reasonably foresee that his conduct would result in an injury." *Goodwin v. James*, 134 N.H. 579, 583, 595 A.2d 504, 507 (1991). The general rule is that "a private citizen has no general duty to protect others from the criminal attacks of third parties." *Dupont v. Aavid Thermal Techs., Inc.*, 147 N.H. 706, 709, 798 A.2d 587, 590 (2002) (citing *Walls v. Oxford Management Co.*, 137 N.H. 653, 656, 633 A.2d 103 (1993)). "[A] landlord-tenant relationship is not a special relationship engendering a duty on the part of the landlord to protect tenants from criminal attack." *Walls v. Oxford Mgmt. Co.*, 137 N.H. 653, 658, 633 A.2d 103, 106 (1993). "When a defendant owes no duty to a plaintiff in light of a particular risk, the defendant cannot be held accountable to a plaintiff who is injured upon the plaintiff's voluntary encounter with that risk." *Allen v. Dover Co-Recreational Softball League*, 148 N.H. 407, 416, 807 A.2d 1274, 1283 (2002) (citing *La Fontaine v. St. John*, 92 N.H. 319, 321, 30 A.2d 476 (1943)).

Here, although Webber asserts that the alleged assault was "foreseeable" to the Radisson, this is nothing more than "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007). Webber does not claim that he had a prior relationship with the Radisson, that the Radisson knew who he was, or that it was aware in advance that he would be attending the event. Further, Webber does not claim that attendees at other events at the Radisson had ever been physically harmed in any way. So Webber has not met his burden of pleading facts showing that the Radisson could have foreseen that

accommodating a public event at which Donald Trump was speaking could have endangered him.

As this Motion seeks dispositive relief, under Local Rule 7.1(c), the Radisson has not sought Plaintiff's assent.

CONCLUSION

Plaintiff Roderick Webber has failed to sufficiently plead the Radisson's duty to keep him free from the complained of danger. For this reason, Defendant, JPA III Management Company, Inc. d/b/a Radisson Hotel Manchester, respectfully requests that this Court grant its Motion to Dismiss and dismiss the Second Amended Complaint in its entirety with prejudice.

Respectfully submitted,

JPA III Management Company, Inc.
d/b/a Radisson Hotel Manchester
By its Attorney,

/s/ Christian H. Hinrichsen
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