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COURT OF APPEALS

STATE OF NEW YORK

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BEADELL,

Appellant,

-against-

NO. 11

EROS MANAGEMENT,

Respondent.

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20 Eagle Street  
Albany, New York  
January 8, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon. The first  
2 case on today's calendar is Beadell versus Eros Management.

3 MR. ISAAC: Good afternoon, Your Honor. Brian  
4 Isaac. I represent the plaintiff-appellant. I would like  
5 to reserve four minutes for rebuttal, if I could, Your  
6 Honor?

7 CHIEF JUDGE WILSON: Yes.

8 MR. ISAAC: Your Honor, I think the - - - before  
9 I start my argument, I think it's important, given the  
10 nature of the claims and given the dichotomy between the  
11 Appellate Division decision with respect to the majority,  
12 and the dissent is to tell you what we're not claiming. We  
13 are not claiming that a hotel has a duty, any duty  
14 whatsoever, to make diagnostic decisions regarding someone  
15 else's mental health. That would be a claim that we  
16 couldn't make. It wouldn't make any sense to do that. Our  
17 argument is essentially that under - - - under an assumed  
18 duty theory of liability, if you say you are going to do  
19 something, you have to do what you say you're going to do.  
20 And if you don't - - -

21 JUDGE CANNATARO: Can you articulate the assumed  
22 duty, Mr. Isaac?

23 MR. ISAAC: Sure.

24 JUDGE CANNATARO: Say what the duty assumed was?

25 MR. ISAAC: So there's two separate - - - as you



1 know from reading the record, there were two separate  
2 assumed duties. Let's start at 6:40. The decedent - - -  
3 it's a little unusual - - - oh, I'm sorry. The decedent is  
4 a little unusual because he's a practicing physician. And  
5 I know that mental health has no occupational stereotypes.  
6 It could affect anyone. But usually people who have this  
7 kind of disability can't function as a lawyer, as a judge,  
8 as a doctor. He's a functioning doctor.

9 JUDGE SINGAS: Does your assumed duty theory have  
10 a temporal aspect to it? In other words, they did call the  
11 police. So are you saying that they didn't call them fast  
12 enough?

13 MR. ISAAC: Twenty-five minutes late, and I think  
14 - - - and I think - - -

15 JUDGE SINGAS: And what do you think, if it was  
16 ten minutes, it would have been okay?

17 MR. ISAAC: I don't think ten minutes would have  
18 been okay either, but certainly if - - -

19 JUDGE TROUTMAN: How does the earlier visit to  
20 the room play - - - come into play?

21 MR. ISAAC: So yes. So Judge Troutman, let me  
22 put that into it. We have to look at the record  
23 holistically. So we need to look at this starting at 6:40  
24 and going up to 7:37. And I'll deal with what happened  
25 after 7:37 after. 6:40, the sister calls, speaks to Kelsey

1 Garcia and says, "No question about it. I think that my  
2 brother may be suicidal. Can you go check on him"? 6:43  
3 there's another call. We know from the Tryp incident  
4 report, and I just want to give you the pages because I  
5 think it's key to my case; 829 to 833 these are the  
6 findings that they have. At 6:46, there's a report back  
7 that the plaintiff is fine. The decedent is not fine.

8 JUDGE CANNATARO: This is why I -- sorry. This  
9 is why I asked you to articulate the duty. And I know you  
10 were getting there, but is the duty in question a duty one,  
11 to go to the room and check on the decedent; two, a duty  
12 assumed to call the police? Or is it some broader duty to  
13 make sure that the decedent didn't harm himself or try to  
14 commit suicide or something?

15 MR. ISAAC: Judge Cannataro, I understand your  
16 question. It's a little bit of both. And let me break it  
17 down temporally, as Judge Troutman said. The initial duty  
18 is just to go to the room and then report back accurately.  
19 If - - -

20 JUDGE HALLIGAN: And who does that duty run to?  
21 Does it run to the decedent, or does it run to the caller?

22 MR. ISAAC: In this case, it would run to the  
23 decedent, and let me - - -

24 JUDGE HALLIGAN: But - - - but how is that  
25 exactly? You have a third-party issue here right?

1 MR. ISAAC: Well, actually, I don't think we did.  
2 This is not a special duty case, so - - - but even assuming  
3 - - -

4 JUDGE HALLIGAN: But - - - but the decedent  
5 doesn't call.

6 MR. ISAAC: That's correct.

7 JUDGE HALLIGAN: Right? And so why do you not  
8 have a third-party issue given that there is a third-party  
9 involved?

10 MR. ISAAC: The reason would be very simply that  
11 even under - - - even under a special duty claim, under  
12 Cuffy, this would be covered. When you read your decision  
13 in Cuffy, there was never - - - and I'll get to now in a  
14 second - - -

15 JUDGE HALLIGAN: But I thought you were arguing  
16 this is not a Cuffy case. So if it's not, why is it not a  
17 Cuffy case?

18 MR. ISAAC: Well, it's not a Cuffy case because  
19 it doesn't involve a municipality. And we all know that  
20 special duty rules - - -

21 JUDGE TROUTMAN: But in this case, even when he -  
22 - - they go to the room, he says, I want to be left alone.  
23 All discussions were had with others prior to even the  
24 first visit and then the subsequent visit. So again, it  
25 goes back to who is the duty owed to?

1 MR. ISAAC: In this case, when you're dealing  
2 with someone who's impaired, and I think we have to agree  
3 that someone who actually takes his or her - - - her own  
4 life is impaired.

5 JUDGE TROUTMAN: So how are hotels or civilians  
6 supposed to make diagnostic - - - they have a duty. Should  
7 they have called a psychiatrist to - - - how do you know -  
8 - - when you said report accurately, how - - - how does  
9 that part work?

10 MR. ISAAC: Well, again, I'm not suggesting they  
11 have anything to do with respect to making any diagnoses.  
12 I said that right off the bat, but this is what they - - -

13 JUDGE TROUTMAN: But you said report accurately.

14 MR. ISAAC: Yes, and this is what they said. I'm  
15 reading their report. This isn't mine.

16 JUDGE RIVERA: Wait a second. Before you read  
17 the report, just finish the sentence. If someone is  
18 impaired, who does the duty run to?

19 MR. ISAAC: I'm sorry?

20 JUDGE RIVERA: If someone is impaired. You were  
21 about to say - - -

22 MR. ISAAC: Yes, I'm sorry.

23 JUDGE RIVERA: - - - the duty runs to. Just  
24 finish the sentence.

25 MR. ISAAC: And if the direct contact is with the

1 first consanguinity relative, under Cuffy, under Sorichetti  
2 - - -

3 JUDGE TROUTMAN: No, I'm sorry. The duty runs  
4 to?

5 MR. ISAAC: It would run to the impaired person.  
6 There's no - - - that's our position. There's no question  
7 about it. And in Cuffy, the order of protection was  
8 secured, as you know, by the husband. The wife had nothing  
9 to do with it. And this court said that the duty ran  
10 there. Same thing in - - -

11 JUDGE HALLIGAN: But you just said this was not a  
12 Cuffy.

13 MR. ISAAC: No, it isn't. It isn't, but - - -

14 JUDGE CANNATARO: We agree that this is - - - all  
15 right. I think we agree that this is not a Cuffy-like - -  
16 -

17 MR. ISAAC: Right.

18 JUDGE CANNATARO: - - - special duty.

19 MR. ISAAC: And the other - - - the other issue  
20 is - - - but I'm just saying that if - - - if the duty can  
21 run in a special duty case and it can certainly run in a  
22 nonspecial duty case, and I would just point you to your  
23 decision in Nallan. In Nallan, there was no direct contact  
24 ever between the person who got shot and the defendant  
25 building owner. And this - - -

1 JUDGE RIVERA: So - - - so - - - so you say the  
2 duty to go to the room and report back, this is a duty that  
3 runs to the person who's impaired?

4 MR. ISAAC: Yes.

5 JUDGE RIVERA: Okay.

6 MR. ISAAC: In this - - - in this case.

7 JUDGE RIVERA: Okay. All right. So what would  
8 they have needed to do to satisfy the duty?

9 MR. ISAAC: Let's talk at 6:40, because I have to  
10 break it down temporally. At 6:40, the only duty they had,  
11 according to our theory, is to report back accurately what  
12 they said. They said the decedent was fine.

13 JUDGE RIVERA: Report back accurately to whom?

14 MR. ISAAC: To the - - - to the sister, who was  
15 the one who - - -

16 JUDGE RIVERA: Well, then why is the duty running  
17 to the person who's impaired?

18 MR. ISAAC: Because the person who's impaired is  
19 - - - is - - - is impaired. He's - - - he's not in a  
20 situation where he can take care of himself. And if you  
21 read the Cuffy decision, and I - - - I'm not trying to go  
22 back to Cuffy, but it is - - - this court has held that you  
23 can have reliance in - - -

24 CHIEF JUDGE WILSON: So what they - - - what they  
25 were told - - - what they were - - - sorry; in front of

1           you, what they were told at 6:34 or whatever it is, is that  
2           he was on a ledge and had taken a picture of being on the  
3           ledge of the roof or something like that. So they check on  
4           the roof. Not there. They check in his room and he's not  
5           on a ledge, and they report back he's fine. Why is that a  
6           breach of whatever duty they might have had at that time?

7                   MR. ISAAC: That wasn't a breach of the duty.  
8           The breach of the duty starts when they go to the room.

9                   CHIEF JUDGE WILSON: No, no, no, they go to the  
10          room. They see that he is not on a ledge outside of his  
11          window, but he's actually in his room.

12                   MR. ISAAC: But he opened - - - I'm sorry. Can I  
13          ask a question?

14                   CHIEF JUDGE WILSON: Why - - - yeah.

15                   MR. ISAAC: He opens the door.

16                   CHIEF JUDGE WILSON: Yeah.

17                   MR. ISAAC: He seems like he's crying. His face  
18          is flushed and red. There are pills and there's alcohol  
19          there. We know from the subsequent police investigation  
20          that the room is in disarray and there's this cough syrup  
21          substance. So if they had said - - -

22                   CHIEF JUDGE WILSON: Well, then you have to turn  
23          in every rock band.

24                   MR. ISAAC: Well, that's probably true.

25                   JUDGE CANNATARO: So now it sounds like you're

1 enhancing the duty because they have to make some kind of,  
2 I don't know, investigatory diagnostic decision about what  
3 it was they see. It's not enough that they go there. He  
4 answers the door. He says, I'm fine, go away. There are,  
5 I think what, empty pill bottle or pill bottles in the room  
6 and empty liquor bottles in the room. And you're saying  
7 they had a duty to notice and report that?

8 MR. ISAAC: No, they had a duty not to say - - -  
9 and this is the testimony of - - - of Ms. Anderson, that he  
10 was fine.

11 CHIEF JUDGE WILSON: Well, I guess what - - -

12 MR. ISAAC: He wasn't fine.

13 CHIEF JUDGE WILSON: Yeah, but I'm trying to get  
14 at, though, is if the thing they were trying to investigate  
15 was somebody on a ledge about to jump, and they go and  
16 look, and there is nobody on a ledge about jump, reporting  
17 back that he's fine in some ways accurately conveys that  
18 he's not on a ledge about to jump.

19 MR. ISAAC: But that's not what the - - - that's  
20 not what the Tryp report says. On 8/29, the first sentence  
21 says guests' sister Gabrielle called and requested that  
22 someone check on her brother as he seemed he would commit  
23 suicide. Methodology by which he commits suicide is  
24 certainly the ledge. That was the precipitating event.  
25 But once you know that someone's suicidal - - -

1 JUDGE RIVERA: If there - - - your argument is  
2 the - - - the observations don't appear to match his  
3 statement that he's fine, right?

4 MR. ISAAC: Correct.

5 JUDGE RIVERA: Okay. So then they are supposed  
6 to call the sister and say he doesn't look fine?

7 MR. ISAAC: No. Just report - - -

8 JUDGE RIVERA: What are they supposed to do?

9 MR. ISAAC: Report back on what their findings  
10 are. They - - - I don't - - -

11 JUDGE RIVERA: You mean their observations?

12 MR. ISAAC: Their observations. It's a reporting  
13 issue at 6:40. I don't want them to make any medical  
14 diagnosis. I will concede to the court that they don't  
15 have to make any medical diagnosis. I couldn't make a  
16 medical diagnosis.

17 JUDGE GARCIA: So what would the - - - what would  
18 the - - -

19 JUDGE RIVERA: And the purpose of that is for the  
20 sister to then decide what steps - - -

21 MR. ISAAC: Of course.

22 JUDGE RIVERA: - - - to take after that?

23 MR. ISAAC: Of course. If the sister knew - - -  
24 if Ms. Anderson was told - - - she's a mental health  
25 professional, by the way. If she was told, look, he seemed

1 fine.

2 JUDGE RIVERA: He's not on the ledge.

3 MR. ISAAC: He's not on the ledge.

4 JUDGE RIVERA: He says he's fine.

5 MR. ISAAC: But he looks like he's crying.

6 JUDGE RIVERA: This is what we observe?

7 MR. ISAAC: Right. She would have absolutely  
8 either contacted the police or asked the hotel because they  
9 were in Nebraska to contact the police.

10 JUDGE TROUTMAN: But let me ask you this.  
11 Considering her full knowledge of his past history from  
12 childhood onward, why - - - why was her vigilance put  
13 aside? Why - - - why would she be comforted? Because she  
14 knows more than they know, arguably, about his past and how  
15 this can escalate. Or why - - - why wouldn't she call?  
16 And what prevented her from being able to, just as an  
17 insurance because she knew more, and not certainly to blame  
18 her, but why couldn't the police be called from where she  
19 was?

20 MR. ISAAC: Well, I can give you the answer. The  
21 answer is she could have called. But remember, and this  
22 got back to the point that I was trying to make, I think,  
23 with Judge Wilson, he's still - - - he's a functioning  
24 person. He's - - - he's been suicidal since he's sixteen.  
25 He never committed suicide. And my adversary makes the - -

1 - makes the argument says, well, you know, the family  
2 didn't want to provoke him. That makes sense because they  
3 know how he reacts. They know how he lives. They know how  
4 he does things. So I'm not - - -

5 JUDGE HALLIGAN: Yeah, the hotel doesn't know  
6 anything about that history.

7 MR. ISAAC: I'm sorry?

8 JUDGE HALLIGAN: The hotel doesn't know anything  
9 about that history does it?

10 MR. ISAAC: The - - - no. The hotel know - - -  
11 the only thing the hotel has to know is at 6:40 is that  
12 he's suicidal. That's it. Once they know he's suicidal -  
13 - -

14 JUDGE GARCIA: But how do they know that? That's  
15 what somebody tells them, right?

16 MR. ISAAC: Yes, and it's in the - - -

17 JUDGE GARCIA: But let's say I call up a hotel.  
18 My ex-wife is in there. I think she's with someone. I  
19 say, you know, I'm her brother and I think she's suicidal.  
20 Could you go up and knock on the door, see what's going on?  
21 They have to do that?

22 MR. ISAAC: I didn't - - - it - - - that's a  
23 different question. My - - - my position - - - my - - -

24 JUDGE GARCIA: Yeah, but it's the same duty,  
25 right?

1 MR. ISAAC: But my position - - - I'm sorry. My  
2 position would be they would. But that's not this case.  
3 This case is a case where they did it.

4 CHIEF JUDGE WILSON: I'm sorry.

5 JUDGE GARCIA: So your position in my  
6 hypothetical is they would have to go up because I claim to  
7 be my ex-wife's brother and say, you know, she's suicidal.  
8 She's been suicidal since she was young. I'm really afraid  
9 she may be on the ledge or you know, could you just see if  
10 she's okay, if anyone's in there - - - and they go knock on  
11 the - - - they have to go knock on the door and then come  
12 tell me. Yeah, she's in there with somebody, don't worry  
13 about it.

14 MR. ISAAC: I don't think it - - - I'm sorry. My  
15 lights on, can I just - - -

16 CHIEF JUDGE WILSON: Yes, continue. And I have a  
17 question for you as well.

18 MR. ISAAC: Yes, thank you.

19 I don't think it's an - - - I don't think it's an  
20 onerous duty if somebody calls a hotel and says somebody is  
21 - - -

22 JUDGE GARCIA: But you don't think it's a problem  
23 for the hotel?

24 MR. ISAAC: No, I don't. I said I don't - - -

25 JUDGE GARCIA: That people are just calling and

1 they're going and knocking on doors and reporting back to  
2 them?

3 MR. ISAAC: When you have someone who calls up,  
4 you might not know the identity, but if I'm on the phone  
5 with my - - - if I'm on the phone with my wife and I say,  
6 honey, I'm having trouble breathing, and then the phone  
7 goes down, there's nobody else. If my wife calls that  
8 hotel and says, can you go check on my husband? I don't  
9 think that there's a duty not to check. If you don't want  
10 to check, then just say, I'm not going to do it, call the  
11 police.

12 CHIEF JUDGE WILSON: So that's not - - - sorry.  
13 So that's not an assumed duty, right because could the  
14 hotel say, no, we're not going to check?

15 MR. ISAAC: Sure.

16 CHIEF JUDGE WILSON: And do they have a duty at  
17 that point?

18 MR. ISAAC: No.

19 CHIEF JUDGE WILSON: Oh, okay. Then, I  
20 misunderstood your answer to Judge Garcia earlier.

21 MR. ISAAC: Yes, absolutely. If they say no now  
22 it's - - - now to Judge Troutman's point. Now it's back  
23 on -- now it's back on the fence.

24 CHIEF JUDGE WILSON: So they don't have a duty in  
25 the abstract to do anything when somebody calls and asks

1           them to do anything at all?

2                   MR. ISAAC: Absolutely, correct.

3                   JUDGE GARCIA: So would the lesson from that rule  
4           be don't do anything?

5                   MR. ISAAC: No, the lesson to that is you should  
6           do something. But if you're not going to do something in -  
7           - -

8                   JUDGE TROUTMAN: No, but if - - - if it is  
9           determined as you're advocating - - -

10                  MR. ISAAC: Yes.

11                  JUDGE TROUTMAN: - - - that if you do go to the  
12           room, there's some heightened responsibility, but if you do  
13           nothing, it's fine. So would that not - - - would that  
14           encourage them to do nothing in the first instance?

15                  MR. ISAAC: I - - - I don't think so. I don't -  
16           - -

17                  JUDGE HALLIGAN: Why not? Why wouldn't you be  
18           looking to minimize any risk of liability because you gauge  
19           incorrectly what the situation is?

20                  MR. ISAAC: Because I think that the - - - the  
21           hotel has a duty to do something.

22                  JUDGE HALLIGAN: You just said that though - - -

23                  MR. ISAAC: No, no, just - - - let me - - -

24                  JUDGE HALLIGAN: Wait. Wait a second.

25                  JUDGE CANNATARO: You started by saying there - -

1 -

2 MR. ISAAC: I - - - I understand. I'm not - - -

3 JUDGE CANNATARO: - - - was no duty and - - -

4 MR. ISAAC: The duty - - - it's - - -

5 JUDGE CANNATARO: Okay. Hold on.

6 MR. ISAAC: Yes.

7 JUDGE CANNATARO: It's a case of assumed duty.

8 So the - - - from a business perspective, if I'm running a  
9 hotel, the answer to that is very simple, don't assume the  
10 duty. Next time someone calls and says, go to the room or  
11 call the cops on my loved one who's in the room, you simply  
12 say, I'm sorry, it's against our policy to do that. If you  
13 want the cops there, you should call them yourself. And  
14 from a policy perspective, I'm a little concerned, and tell  
15 me why if I should not be, that this is going to be - - -  
16 if we recognize that duty the way you want it, this will -  
17 - - could be the last case, because then the answer for  
18 everyone else after this is going to be, no, we don't do  
19 that.

20 MR. ISAAC: Well, first, I - - - I don't think  
21 that that's a situation that's actually going to arise.  
22 Like, this hotel didn't do it. I don't think other hotels  
23 would do it. But my point is that if somebody calls and  
24 says that a guest is suicidal, and the hotel decides I am  
25 not going to do anything, I don't think it's unfair for the

1 hotel to be - - - to - - - to be able to say, look, we're  
2 not going to do with it. This is a police matter. Call  
3 the police. In that case, the - - - the - - - the parents  
4 or the family knows what to do. That's not what happened  
5 here.

6 JUDGE HALLIGAN: So why are you not - - - I think  
7 the question, though, is why is the rule that you're  
8 requesting not incentivizing that response, which is it's  
9 against our policy to do that; if you want to reach out to  
10 the police, you need to do that yourself.

11 MR. ISAAC: Because I don't think it's good  
12 business for any hotel to say that. And I don't think that  
13 any hotel in New York City would actually say that in a  
14 situation like this.

15 CHIEF JUDGE WILSON: So could I ask - - -

16 MR. ISAAC: That's what I think.

17 CHIEF JUDGE WILSON: Could I ask you to turn to  
18 the promise to call the police because we've been talking  
19 about this earlier.

20 MR. ISAAC: Yes. I'm sorry.

21 CHIEF JUDGE WILSON: So let's, for just the sake  
22 of argument, assume that once they say we will call the  
23 police, they have a duty to call the police, and then they  
24 take a while to do that. Why - - - why isn't it the case  
25 that there's no proximate cause here as a matter of law?

1 MR. ISAAC: Well, we're - - - we're relying on  
2 essentially two cases. One is Brown, as you know, and the  
3 other is Derdiarian. Brown was a - - - a kind of a wake up  
4 case even though it said what the law was. It made clear  
5 that you don't have to prove of a certainty that a  
6 particular remedy would or would not have resulted in - - -  
7 in an injury. And we're dealing here with loss of chance.

8 So loss of chance jurisprudence inherently  
9 recognizes - - - I know there aren't a lot of cases in this  
10 court. You have Lang against Newman, you have the Wild  
11 case. But it wasn't really decided. But the Appellate  
12 Division cases are very, very clear. What they recognize  
13 is that if the gravamen of the plaintiff's claim is that  
14 the defendant was negligent by not doing something that the  
15 defendant should have done, then the defendant cannot use  
16 its negligent act affirmatively to say there's no proximate  
17 cause, because the plaintiff cannot state of a certainty  
18 that something would or would not have occurred. And I  
19 think this is actually covered in - - -

20 JUDGE HALLIGAN: Well, then how - - - how does  
21 the proximate cause inquiry get - - - get sorted out, if  
22 that's not the way to consider it?

23 MR. ISAAC: It's a question of fact. It's a  
24 question of fact for a jury. And we have three expert  
25 affidavits that talk about that.

1 JUDGE HALLIGAN: Right. But - - - but you're  
2 saying that's not the standard that you apply to the facts.  
3 So what is the standard in terms of ascertaining if there's  
4 proximate cause?

5 MR. ISAAC: That's the standard. The standard is  
6 - - - the standard is would an earlier intervention under  
7 the facts of this case given a deteriorated condition with  
8 an individual who was taking alcohol, was communicating  
9 because that was a big factor with - - - with his - - -  
10 with his wife and with his daughter and who hadn't  
11 committed suicide, would it - - -

12 JUDGE SINGAS: Well, is it important at all in  
13 that analysis that when the police got there, he was still  
14 alive?

15 MR. ISAAC: Yeah, but you - - - that goes both  
16 ways, though. Remember what happened. They can't get into  
17 the door. They take some thirty minutes to get in. They  
18 break the lock. He's outside on the ledge, standing on the  
19 ledge. When the police come, Officer Kim comes, he doesn't  
20 jump right away. He comes back, sits down, and then  
21 propels himself off the ledge. So that goes both ways.  
22 And this is summary judgment motion.

23 JUDGE CANNATARO: Mr. Isaac, if a high court  
24 found that the question that you just posed, any answer to  
25 that question would be entirely speculative, you know, we

1 just can't know what would happen if the police showed up  
2 five, ten, fifteen minutes earlier, couldn't proximate  
3 cause then be decided as a question of law?

4 MR. ISAAC: In this case - - - I'm not saying  
5 that proximate cause could never be decided as a question  
6 of law. It depends on the facts of this case. But I would  
7 point out to you, Judge Cannataro, that the defendants in  
8 this case did not submit any expert proof or any other  
9 proof of any type in which they said, through a review of  
10 the evidence that this suicide wasn't preventable. The  
11 only - - -

12 JUDGE CANNATARO: But there was a finding below  
13 that your expert's view of, you know, the - - - the loss of  
14 opportunity, I guess I'll call it, was - - - was a  
15 speculative.

16 MR. ISAAC: Correct. And we say that that's  
17 wrong under the case law. And we say it's also wrong under  
18 basic summary judgment principles, which clearly say that  
19 my burden, as one opposing summary judgment, is to oppose  
20 what the movant says. The movant sets the table. The  
21 movant can have five different bases for summary judgment.  
22 If the movant raises two, I have to oppose two, so I don't  
23 see any proof on their side that this wasn't preventable.  
24 In fact, their expert didn't say that at all. I see I'm  
25 over my time. Is it okay if I sit down and I'll make

1 anything up on my rebuttal?

2 CHIEF JUDGE WILSON: Absolutely.

3 MR. ISAAC: I'm sorry for going over.

4 MS. SMITH: May it please the court, Jessica  
5 Smith for the defendants-respondents here. So central to  
6 this appeal is whether a hotel can be held potentially  
7 liable for the suicide of a guest based upon a delay in  
8 calling 911, all predicated on complaints made by unknown  
9 callers despite the guest for - - -

10 JUDGE CANNATARO: Counsel, do we agree that - - -  
11 that unknown caller said something in sum and substance  
12 along the lines of call the police right away?

13 MS. SMITH: So they said that at the last call.  
14 Before then, you know, the supervisor calls the family back  
15 and says - - -

16 JUDGE CANNATARO: This is after the fifteen  
17 minutes transpired and they called back and said, are you  
18 sure you want us to do that?

19 MS. SMITH: Yeah. I'm saying at the 7:12 call is  
20 when they asked her to the - - - the hotel employees to  
21 call the police, right. She did say something - - -

22 JUDGE CANNATARO: Right away?

23 MS. SMITH: - - - along the lines - - -  
24 immediately, right away - - -

25 JUDGE CANNATARO: Yeah.

1 MS. SMITH: - - - something along those lines.

2 CHIEF JUDGE WILSON: So could - - - could a hotel  
3 voluntarily assume a duty to call the police?

4 MS. SMITH: I would say that they did not.

5 CHIEF JUDGE WILSON: No, no, no, no. Could it -  
6 - - could they theoretically?

7 MS. SMITH: Theoretically have assumed a duty? I  
8 think not under these circumstances. Based - - -

9 CHIEF JUDGE WILSON: No, I'm not asking about  
10 these circumstances. I'm asking you to make up some  
11 circumstances, if you can, in which a hotel could  
12 voluntarily assume a duty to call the police. If you say  
13 that's never possible, that's an answer. If not, then tell  
14 me how it could.

15 MS. SMITH: I think theoretically, there could be  
16 a scenario where they assume the duty. I mean if you - - -

17 CHIEF JUDGE WILSON: What would that be like?

18 MS. SMITH: Well, if I could take you to the  
19 Ferrer case, which was relied upon by plaintiff's counsel,  
20 right. That was a hotel - - - I think that was a  
21 apartment complex. But those actual individuals took  
22 custody of the sexual assault victim and isolated her from  
23 her friends and family ba - - - essentially berated her  
24 into trying to press charges. Then after that, in an  
25 emotional state, left her alone, unsupervised, next to an

1 open window. She then committed suicide, right? So that  
2 is an assumed duty case. That's not what we have here. We  
3 did not take possession or control. We did not isolate the  
4 decedent in any way, nor did we put him in a position that  
5 he would have been worse - - - that he was worse off than  
6 had we not acted at all.

7 JUDGE HALLIGAN: So Ferrer are different facts,  
8 right? And - - - and I guess my question is, is there any  
9 circumstance in which a response to a call to a hotel that  
10 requests getting the police to come, could that ever give  
11 rise to an assumed duty in your view? Is there anything  
12 that could be said in that conversation that would - - -  
13 that would allow for an assumed duty?

14 MS. SMITH: I would say, you know, I really don't  
15 think so because the problem is here - - -

16 JUDGE HALLIGAN: So even if - - - even if someone  
17 calls and says, I have a two-year-old who's locked in the  
18 room, and I need you to call the police because they're  
19 very sick and we need an ambulance, and the hotel says,  
20 yes, we'll do that right away. No assumed duty there?

21 MS. SMITH: I would say not - - - again, the  
22 problem is - - -

23 JUDGE HALLIGAN: Why not?

24 MS. SMITH: We have no idea who this individual -  
25 - -

1 JUDGE HALLIGAN: No. I'm not - - - I'm asking  
2 you a hypothetical. I'm not asking you about this case.  
3 I'm saying in a circumstance where there is someone in a  
4 hotel room who is incapacitated, either because of a  
5 physical condition or perhaps age, if a hotel promises a  
6 caller that they will reach out to the police or the EMTs,  
7 does that give rise to an assumed duty?

8 MS. SMITH: I think it would depend on whether  
9 they were a guest.

10 JUDGE HALLIGAN: Let's assume they're a guest in  
11 the hotel. Under those circumstances?

12 JUDGE CANNATARO: No, the caller is not a guest.

13 JUDGE HALLIGAN: Sorry. Yes. No. The - - - the  
14 person in the room is the guest. The caller is not a  
15 guest.

16 MS. SMITH: I would say it would depend on  
17 whether the caller, in fact, was a guest. That's the  
18 person that has a - - -

19 JUDGE HALLIGAN: The caller is a - - - okay. So  
20 - - - so no - - -

21 MS. SMITH: So then I would say no.

22 JUDGE HALLIGAN: No promise - - - okay.

23 JUDGE CANNATARO: So what legal significance, if  
24 any, do you attach to the fact in this case that the hotel  
25 personnel did eventually call the police, and I think even

1 went to the station, which was nearby?

2 MS. SMITH: Sure. I mean they - - -

3 JUDGE CANNATARO: Is that not like sort of  
4 confirmatory of the fact that a duty was assumed?

5 MS. SMITH: I mean, I - - - I think a duty is not  
6 necessarily assume when you have someone who is essentially  
7 being a Good Samaritan person.

8 JUDGE CANNATARO: So that was a purely gratuitous  
9 act on their part?

10 MS. SMITH: Exactly. I mean they had - - -

11 JUDGE RIVERA: So you're saying they were not  
12 acting in their role as an employee of the hotel?

13 MS. SMITH: They were an employee of the hotel,  
14 but they didn't assume a duty by, in fact, essentially of  
15 their own good will, calling - - -

16 JUDGE RIVERA: So what's the point of - - - of  
17 calling back - - - the Good Samaritan, what's the point of  
18 calling back and saying, are you sure you want to go down  
19 this road?

20 MS. SMITH: Well, I think that - - -

21 JUDGE RIVERA: And all of that. That's a - - - a  
22 Good Samaritan doesn't spend their time doing that. They  
23 just go.

24 MS. SMITH: Well, I think this is if you think  
25 about the callback, it's actually a measured response,

1           because if we - - - we can't take this case - - -

2                       JUDGE RIVERA: Well, it sounds like what an  
3           employee of a - - - of a hotel would do. I understand  
4           that, that's why I'm surprised you're saying they did this  
5           on their own. Was that ever asserted? Is there anything  
6           in the record to suggest this?

7                       MS. SMITH: It's not that they did it on - - - I  
8           don't think they were - - - there was any indication that  
9           they were trained other than when they observed a physical  
10          - - - risk of physical harm to an individual or themselves.  
11          That is the training they receive to then call the police  
12          if they felt the need to. So it's - - - there's nothing  
13          saying that just as an employee they were required, in  
14          fact, to call the police in a circumstance like this.  
15          That's not supported in in the record. My point is that  
16          there was no assumed - - -

17                      JUDGE RIVERA: I'm not - - - I'm not talking  
18          about the hotel requiring them to call.

19                      MS. SMITH: Okay.

20                      JUDGE RIVERA: You have an employee who's - - - I  
21          think part of the delay is to find out whether or not they  
22          should do any of this, but okay. The - - - the employee of  
23          the hotel identifies themselves as such to the caller.

24                      MS. SMITH: Yes.

25                      JUDGE RIVERA: Indeed takes the action that's

1 requested, albeit belatedly. Why - - - why isn't he right  
2 that that's an assumption of the duty?

3 MS. SMITH: Because the - - -

4 JUDGE RIVERA: But with the 911 call; forget the  
5 first call and seeing the room. Let's just get to this 911  
6 call issue.

7 MS. SMITH: Well, they didn't take control over  
8 the situation. They - - - they didn't prevent the decedent  
9 from receiving help in any way. They have to have actually  
10 - - -

11 JUDGE RIVERA: Is that your point that the  
12 decedent - - - the decedent, necessarily, the sister could  
13 have called nine - - - the decedent's not going to call  
14 911.

15 MS. SMITH: Right.

16 JUDGE RIVERA: The sister should have just called  
17 or the wife should have just called 911, regardless of what  
18 the hotel tells them?

19 MS. SMITH: Well, right. She should have just  
20 called 911 regardless of what the hotel said - - -

21 JUDGE CANNATARO: Well, she couldn't have called  
22 911, right, because she's in Minnesota. If you call 911,  
23 you're going to get some local police station.

24 MS. SMITH: Or - - - or the police. I guess  
25 maybe I shouldn't have said 911.

1 JUDGE RIVERA: And the police would have believed  
2 her or not spent some time trying to figure out if this is  
3 just a prank call.

4 MS. SMITH: Right. And that would be something  
5 more they were able to do.

6 JUDGE RIVERA: And delayed it even more, as  
7 opposed to the hotel that has personnel immediately  
8 available to go and check?

9 MS. SMITH: Well, I - - - the hotel - - -  
10 essentially, all they did here is they received a call from  
11 someone who was claiming - - -

12 JUDGE RIVERA: Several calls.

13 MS. SMITH: Yes, but this individual is claiming  
14 to be a relative. They have absolutely no idea of - - -

15 CHIEF JUDGE WILSON: But - - -

16 JUDGE RIVERA: Yeah, but that - - - that's not  
17 what - - - they didn't not - - - they didn't do something  
18 or not do something because of that, as far as this record  
19 shows. I mean, why would they go and check? Why would  
20 this person go anyway to the police if it's a stranger? I  
21 think it's a prank.

22 MS. SMITH: Well, I think that it shows they had  
23 a measured response after the 7:12 call when she said - - -  
24 that was the first request, by the way, that the plaintiff  
25 wanted the police and - - - I'm sorry, the sister wanted

1 the police involved. They spoke to the supervisor. The  
2 desk agent spoke to the supervisor. The supervisor then  
3 called her back and confirmed. Are you sure you want the  
4 police involved, which is totally reasonable.

5 CHIEF JUDGE WILSON: Let's - - - let's - - -  
6 let's suppose, hypothetically, that the hotel knows that  
7 these are actually the sister and the wife of the person of  
8 their hotel guest. Let's - - - let's hypothetically assume  
9 that. Does that change anything about your view on  
10 assumption of duty?

11 MS. SMITH: No.

12 CHIEF JUDGE WILSON: Okay. So it really just has  
13 nothing to do with whether this - - -

14 MS. SMITH: It really doesn't.

15 CHIEF JUDGE WILSON: - - - this is a stranger or  
16 not.

17 MS. SMITH: I mean, and the problem is even - - -  
18 okay. Let's say they assume that duty. It doesn't even  
19 matter here.

20 CHIEF JUDGE WILSON: Well, but let's not say - -  
21 - I want to find out.

22 MS. SMITH: Well, I'm just saying they just like  
23 did - - -

24 CHIEF JUDGE WILSON: Yes. I understand. So  
25 suppose they know these are really the people they say they

1 are, and they are really the relatives, and this woman  
2 really is a medical professional who's calling, and they're  
3 saying, this man has a history of suicide and is suicidal.  
4 Please call the police immediately. The hotel says, yes,  
5 we promise you we will call the police immediately. And  
6 they never do. Is there an assumption of a duty there or  
7 no? I know that's not the case.

8 MS. SMITH: Only if they put the decedent in a  
9 worse position than he had been, had they not acted at all.

10 CHIEF JUDGE WILSON: Well, that's - - -

11 MS. SMITH: And that would require isolating him  
12 from assistance, which never happens here because - - -

13 CHIEF JUDGE WILSON: Well, is that a proximate  
14 cause question or a duty question?

15 MS. SMITH: I would say it is a duty question  
16 because they don't actually isolate him. They don't take  
17 on - - - they don't take custody.

18 CHIEF JUDGE WILSON: Well, he's not any worse if  
19 he's - - - to take Mr. Isaac's point, if he's not in worse  
20 - - - he's not put in a worse condition, then there's no  
21 proximate cause, right? He's got to be - - - have lost  
22 some sort of a chance.

23 MS. SMITH: So that's actually a two pointer. So  
24 first of all, I - - - I would say that loss of chance is  
25 not applied outside of medical malpractice context for very

1 good reason because, you know, we don't have that  
2 scientific outcome that we can you know, essentially look  
3 at studies, apply that say someone is diagnosed with cancer  
4 or stage - - - could have been stage one, and then they get  
5 intervention. At that time, their odds are significantly  
6 improved even though they would have died anyway, rather  
7 than - - -

8 JUDGE RIVERA: Well, if than any less speculative  
9 than perhaps an expert who has worked on - - - worked in  
10 situations dealing with people who are suicidal - - -

11 MS. SMITH: Because that - - -

12 JUDGE RIVERA: - - - and says, in my experience,  
13 based on all the times I've worked on this, all the people  
14 I've worked with, if the police had gotten there twenty  
15 minutes earlier, there was an increased opportunity to save  
16 this person's life.

17 MS. SMITH: So there you actually have a  
18 scientific study over a period of time indicating that  
19 there would have been a, you know, a better comfort in his  
20 living, a better condition in his future, or he would have  
21 had more - - - more years to live. We don't have that  
22 here. We know that the police arrived. The decedent was  
23 still alive at that point in time. They had the ability to  
24 assist him.

25 To say whether if they had arrived, you know,

1 twenty minutes earlier or five minutes earlier, it's  
2 completely speculative. Nobody can say what would have  
3 happened in that - - - that interval of time. Would a one  
4 minute, you know, different - - - would a one minute of  
5 difference have changed the outcome potentially? And also  
6 what is the improved outcome here? He's either going to be  
7 deceased by suicide or he's going to remain alive. We  
8 don't have this opportunity like a cancer case or - - -

9 JUDGE RIVERA: There is a big difference.

10 MS. SMITH: Huh?

11 JUDGE RIVERA: Seems a big difference.

12 MS. SMITH: I - - - I'm not saying that it's not  
13 a big difference. I'm saying if you look at a cancer case  
14 or somebody who's deprived of oxygen, that's why loss of  
15 chance fits there, right? That you have scientific studies  
16 that show what the difference would be - - - the impact  
17 would be if somebody received life saving measures earlier?

18 JUDGE RIVERA: Well, let's just stick with the  
19 tort - - - the tort analogy, the - - - the argument that if  
20 - - - if indeed the hotel had contacted in a timely fashion  
21 based on their response to the sister, the police, the  
22 police who I believe across the street would have gotten  
23 there, and they would have had more time to try and talk  
24 him down, they would have gotten into the room sooner. It  
25 was just - - - why - - - why isn't that enough to get you

1 to perhaps a jury?

2 MS. SMITH: Because the expert doesn't show  
3 anything other than anecdotal references that there is any  
4 evidence that that five minutes or twenty minutes would  
5 have made a difference.

6 JUDGE RIVERA: We're just talking about the - - -  
7 the duty - - - the duty part of it.

8 MS. SMITH: The duty part.

9 JUDGE RIVERA: Why isn't that a duty?

10 MS. SMITH: I'm sorry.

11 JUDGE RIVERA: Take it on - - - you - - - you've  
12 said yes. We're going to call, and then you wait. You  
13 wait a long period of time.

14 MS. SMITH: Well, we first we - - we did call and  
15 we did ask her. So I don't think it's just we sat on our  
16 hands for a while.

17 JUDGE RIVERA: Why - - - why did you - - - call  
18 her for what? She's already said call 911.

19 MS. SMITH: Well, she is not the guest. We don't  
20 have any relationship to this random - - -

21 JUDGE RIVERA: Why - - - why - - -

22 MS. SMITH: - - - woman who's calling. So we  
23 called - - -

24 JUDGE RIVERA: Well, that's reason to say we  
25 can't take your call anymore. Call directly yourself.

1 It's not a reason to - - -

2 MS. SMITH: Well, that is - - - then you have - -

3 -

4 JUDGE RIVERA: - - - continue in a dialogue that  
5 delays any movement - - -

6 MS. SMITH: That's a public policy problem.

7 JUDGE RIVERA: - - - that might save this man.

8 MS. SMITH: And then if you - - - if this court  
9 says that's all everyone needs to say, I'm sorry, we don't  
10 have any responsibility for you. I don't know who you are.

11 JUDGE RIVERA: No. He says you don't have to do  
12 anything. He says but once you do, now you've taken it  
13 upon yourself. You don't have to. You could do exactly  
14 that and say, we don't know you or our policy is whether we  
15 know you or not, we will not make these calls. We will not  
16 interrupt a guest.

17 MS. SMITH: Well, I think that's a very  
18 problematic thing that's going to - - - if this court goes  
19 that way, there will be a lot of hotels that will implement  
20 this policy. And I'm sorry, we can't help anyone, no  
21 matter who calls. No matter - - -

22 JUDGE HALLIGAN: Can I - - - can I ask you about  
23 the proximate cause question and one of the affidavits? So  
24 the affidavit says essentially that most suicides are  
25 preventable, every minute counts and that the conduct of

1 the decedent here was evolving. It started with the text,  
2 and then it moved to him being on the ledge. So why isn't  
3 that enough to create an issue of fact for purposes of  
4 proximate cause?

5 MS. SMITH: Although - - -

6 JUDGE HALLIGAN: I mean, it's very unusual, as I  
7 think you'd acknowledge, to decide proximate cause as a  
8 matter of law, right?

9 MS. SMITH: Well, I think the problem is here  
10 that we know that the police were there, and I don't think  
11 the experts are pointing to anything that really other than  
12 just speculation that it could have - - -

13 JUDGE HALLIGAN: But why is that - - - the police  
14 were there, and so then it seems to me the question is - -  
15 - is - - - is the jumping an independent intervening cause,  
16 right? But - - - but why are the statements in that  
17 affidavit that most suicides are preventable, the time is  
18 of the essence, and that his conduct was - - - was  
19 progressing? Why isn't that enough to put it over the line  
20 to make it a question of fact?

21 MS. SMITH: Because there's really - - - he  
22 doesn't go into detail about exactly what that means. He  
23 wasn't - - - the decedent - - -

24 JUDGE HALLIGAN: Well, what would he have had - -  
25 -

1 MS. SMITH: - - - this was only an hour period of  
2 time. So I think we have to put that into - - - into  
3 perspective.

4 JUDGE HALLIGAN: And what would he have had to  
5 say in order to get across the line from your perspective?

6 MS. SMITH: Well, I think he would have to  
7 actually - - - because they're - - - a big part of this is  
8 intoxication, the idea that this individual is under the  
9 influence, which was fueling in part his, you know,  
10 descending condition. He would actually need to go into  
11 detail. They would actually need to - - -

12 JUDGE HALLIGAN: His point, I think, is just  
13 that, you know, the window of time - - - I know your  
14 light's on. I'll finish. But the window of time is  
15 critical here, and so the delay matters.

16 MS. SMITH: I understand that, but he can't say  
17 whether a minute, two minutes or five minutes would have  
18 made any actual difference here. We're talking about  
19 something so - - -

20 JUDGE CANNATARO: Your adversary is correct,  
21 though, isn't he, that you - - - you didn't put in your own  
22 causation expert testimony, right?

23 MS. SMITH: There isn't a causation expert. We  
24 have an expert from someone who does - - - who does  
25 security assessments. However, I think based upon the

1 facts alone, the problem is that the police arrive. The  
2 police arrived with sufficient time to assist this  
3 individual. They speak to them. So any expert - - -

4 CHIEF JUDGE WILSON: Well, how do you - - -  
5 sorry. How do you know that time is sufficient?

6 MS. SMITH: We know - - - I guess I - - -

7 CHIEF JUDGE WILSON: You were just saying you  
8 didn't know whether one or two or three or five minutes  
9 would make a difference. So I don't know how you know that  
10 three minutes is sufficient.

11 MS. SMITH: I can't say that three minutes - - -

12 CHIEF JUDGE WILSON: You did. Okay.

13 MS. SMITH: And I should not have used the word  
14 sufficient. So that was my error. But the point is that  
15 the expert doesn't show how that small difference of time  
16 would have actually made an impact. He does speak in  
17 generalities that, yes, suicides are preventable.

18 JUDGE RIVERA: Well, it's not a - - - it's not a  
19 small difference of time. It's not two minutes. Right.

20 MS. SMITH: I mean - - -

21 JUDGE RIVERA: It's a twenty-five minute delay  
22 even to call the police; is it not? And then it's time to  
23 get in the room.

24 MS. SMITH: So the time to get in the room, I  
25 think, is an interesting point, and I'll just briefly touch

1 on that if the court will allow me is that they do submit  
2 an expert as to that, but the expert doesn't actually  
3 explain. He doesn't say anything about what they should  
4 have done differently to gain access to the room. And I  
5 think this court and everyone can understand if it was too  
6 easy to get into that room, then, you know, the hotel would  
7 face another lawsuit of a different character saying, you  
8 know, an assailant was able to gain access to this room too  
9 easily.

10 JUDGE RIVERA: But isn't that - - - isn't that  
11 your friend's point that because that will take time for -  
12 - - the privacy that the hotel and security the hotel is  
13 providing to its guests, as all of us who have stayed in  
14 hotels expect and are comforted by, that knowing that it's  
15 going to take time means you can't delay upfront getting  
16 the police involved.

17 MS. SMITH: I think that is just this - - - these  
18 are, you know, hotel employees, a desk clerk. These are  
19 not people who are familiar with police procedures,  
20 handling suicides every day, which, you know, time and time  
21 again, the experts actually try to tie these individuals  
22 into police officers. So what they did is when the police  
23 were unable to gain access, the chief engineer had to  
24 essentially get the device started that needed to open the  
25 door. Then it was bolted and they went through the process

1 to unbolt the door. But that doesn't add - - -

2 JUDGE RIVERA: Do you have a faster process if  
3 there's a fire in the room?

4 MS. SMITH: Presumably. I - - - I can't - - -  
5 there's nothing in the record about, you know, a fire and  
6 exactly how those circumstances are handled. So I can't  
7 really speak to - - -

8 JUDGE RIVERA: There are other ways to get in the  
9 room faster than what happened here.

10 MS. SMITH: Is there? There's nothing in the  
11 record that says that one way or another. We don't really  
12 know.

13 JUDGE CANNATARO: Can I ask you one quick  
14 question about this causation expert? Do we have to accept  
15 the proposition that's laid out in the passage that was  
16 read by Judge Halligan that in all cases of potential  
17 suicide timing in - - - in the way that it was laid out  
18 there is - - - is critical, or is that something that a  
19 court can say, well, maybe in some cases it is, and maybe  
20 in some cases it isn't in the absence of any contradictory  
21 statement from your side?

22 MS. SMITH: I think that - - -

23 JUDGE CANNATARO: My question is this. If  
24 someone is bound and determined to kill themselves, it's  
25 conceivable to me that taking action to intervene might

1 actually accelerate the process, right? When the cops  
2 come, you're like, I got to - - - I got to - - - it's now  
3 or never.

4 MS. SMITH: The record supports that.

5 JUDGE CANNATARO: But - - - but you know, that's  
6 not in the record. And that's why I'm asking you, are we  
7 bound on this record to accept that representation about  
8 the timing of intervention?

9 MS. SMITH: So I'd - - - I'd actually disagree.  
10 Maybe an expert opinion on that is not supported by the  
11 record, but the record actually shows, through plaintiff  
12 Greeninger's own statements, that she was concerned that  
13 the police would actually prompt him to take suicide, and  
14 she actually does testify to that effect. So I would say  
15 that actually is - - - there was a concern over contacting  
16 the police too early, which is notable because they  
17 actually didn't ask for the police to be contacted until  
18 the 7:12 call. But I - - - so I wouldn't say that.

19 Now, can you accept all, and I just want to bring  
20 it back to this particular case, though, because we knew he  
21 was actually on the ledge previously, so he was already at  
22 the moment, at this juncture that he was at right when the  
23 police involved - - - were involved and saw him in the  
24 room, he was already in that position before they even  
25 called the hotel. So then - - -

1 JUDGE RIVERA: So let me just ask from your  
2 client's perspective, what - - - what should happen when  
3 someone calls and says, my brother's a guest in the hotel.  
4 I think he's suicidal.

5 MS. SMITH: From my client's perspective, you  
6 want that?

7 JUDGE RIVERA: Please - - - please, go and check  
8 on him. What - - -

9 MS. SMITH: Well, if - - - if the - - - if - - -

10 JUDGE RIVERA: Is what happened here exactly what  
11 your client believes is correct and appropriate?

12 MS. SMITH: Even if the actions were imperfect,  
13 perhaps, or could have been happened quicker, they still  
14 complied with the duty here. They did everything that was  
15 asked of them over the phone. They checked on him. They  
16 checked the balcony. They checked the roof access. They  
17 went and they checked the room. After the request for  
18 police assistance was made, they went to the station. They  
19 got the - - -

20 JUDGE RIVERA: What's the reason for the delay?

21 MS. SMITH: I'm sorry?

22 JUDGE RIVERA: What's the reason for the delay?

23 MS. SMITH: I can't speak to the specific reason  
24 for the delay. Other than the fact - - - there was  
25 actually no delay, actually, I would say in the beginning.

1 I think if you're going to talk about any delay, it can  
2 only run from the 7:12 because all the time shows - - -

3 JUDGE RIVERA: No, I mean the 911 call.

4 MS. SMITH: Okay. So I can't say specifically,  
5 but it's clear from the record that there was a  
6 communications between Ms. Tapia and Kelsey, the front desk  
7 agent, after which then, having been the less senior  
8 person, she went to her manager. The manager then called  
9 to confirm. So I can't speak more about the delay other  
10 than what showed in the record. And that seems to be what  
11 occurred, which would make sense as a measured response as  
12 hotel employees in that circumstance.

13 So if there's nothing else, no other questions.  
14 I know I'm way over time, so I'll - - - I'll rest on my  
15 brief.

16 CHIEF JUDGE WILSON: Thank you.

17 JUDGE RIVERA: Why isn't she correct? It's a  
18 measured response. Because they had to internally  
19 determine how best to respond to the request to call the  
20 police.

21 MR. ISAAC: Because it wasn't measured based upon  
22 what was said. And I can read it to you right now. 314 of  
23 the record, paragraph - - - line 21, "What did Kelsey say  
24 to you"? This is Ms. Anderson's testimony, 314. "Answer.  
25 At that time, I asked her then to contact police

1 immediately and put my brother in a seventy-two hour hold.  
2 Kelsey said she would contact the police immediately".

3 Even if you accept what my adversary says, you  
4 have another delay. Because that call was at - - - at - -  
5 - at, I think 6:26 or 7:26. So you still had another  
6 thirteen minute delay there. There is no excuse here  
7 anywhere on this record for that delay. It wasn't  
8 explained. It wasn't explained by an expert, it wasn't  
9 explained by testimony. And most importantly, it wasn't  
10 explained in their brief. It was a beautiful brief, very,  
11 very well written. But there's not - - -

12 JUDGE RIVERA: She says it's because they had to  
13 determine internally from this particular employee to their  
14 supervisor how to respond to this request.

15 MR. ISAAC: If that happened, okay, even at that  
16 scenario, that call was made at 7:26. You know that you  
17 have someone with a suicidal ideation at 6:40. You don't  
18 call until 7:37. And you say that that establishes due  
19 care as a matter of law. That, I'm sorry, just doesn't  
20 make any sense.

21 JUDGE SINGAS: But - - -

22 JUDGE RIVERA: Well, then what's your rule  
23 because there has to be some line? What is your rule?

24 MR. ISAAC: The rule is that if you say you're  
25 going to do something under an assumed duty theory and you

1 don't do it, you can be liable if your actions placed the  
2 injured party in a more dangerous position, and that party  
3 - - -

4 JUDGE RIVERA: And he's placed in a more  
5 dangerous position because what?

6 MR. ISAAC: I'm sorry?

7 JUDGE RIVERA: He's placed in a more dangerous  
8 position because what, the sister now is not going to make  
9 a phone call?

10 MR. ISAAC: That's exactly what she said.

11 JUDGE SINGAS: But should we examine the  
12 reasonableness of that decision in - - - in our analysis?  
13 I mean, look, I've stayed at hotels. I don't think I would  
14 rely on the front desk to send up a bellman to - - - if my,  
15 you know, loved one's life was in the, you know, hanging in  
16 the limb. And they also have to make an assessment,  
17 according to you, objectively, about the condition of what  
18 this person looks like. They don't know who this person  
19 is. To them, he might look fine, but I know my brother,  
20 and if I saw him, I knew that he would be in distress. But  
21 is it reasonable for her to rely on these hotel employees  
22 in this situation?

23 MR. ISAAC: In this case, Judge Singas, one  
24 hundred percent. Let me tell you why. She's not in New  
25 York, okay? If my - - - let - - - let - - - let me make it

1 easy. If my son is in Mexico and I find out that there's a  
2 problem that he has, I'm not going to try to figure out  
3 which Mexican consulate to call or which - - - which police  
4 department to call. I'm calling the hotel.

5 JUDGE HALLIGAN: But you could do both.

6 MR. ISAAC: She could have. But her negligence  
7 doesn't mean that this defendant isn't negligent. You can  
8 criticize her all you want. There's no such thing.

9 JUDGE HALLIGAN: I'm not - - - I'm not  
10 criticizing.

11 MR. ISAAC: No, I'm not suggesting you are. But  
12 I'm saying that the fact that another party is negligent  
13 doesn't absolve a negligent party of responsibility if that  
14 party's responsibility is a proximate cause of the  
15 accident.

16 JUDGE CANNATARO: Mr. Isaac, Mr. Isaac, I'm of  
17 the opinion that reasonable reliance plays a part in  
18 defining - - - in staking out the scope of the duty in  
19 question here, and that's informed largely by Herd. And  
20 since it was raised, I - - - would you at least entertain  
21 the notion that any reliance that she might have had in  
22 that representation about the call had to be thrown into  
23 question when they call her back and say, are you sure you  
24 want us to do that, because that's signaling that they  
25 don't know if they want to call or not?

1 MR. ISAAC: Well, no. I think - - - I think,  
2 just let me - - - let me do this with you temporally, Judge  
3 Cannataro.

4 JUDGE CANNATARO: Right.

5 MR. ISAAC: The call comes - - - the call comes  
6 in at 7:12. And I read you because I wanted to read it  
7 because you had asked the question about it. I read you  
8 what she said. You get a call back at 7:26 and saying,  
9 well, are you sure? And of course, the sister kind of  
10 freaks out and says, call right now. She's furious. So  
11 that time frame doesn't change the calculus, because the  
12 issue here is the reliance of the sister.

13 JUDGE CANNATARO: Well, what I'm saying is when  
14 they call her and she's now furious because they didn't do  
15 what she asked them to do. One possible way of  
16 interpreting that is, I can't rely on these people to do  
17 what I asked them to do. They - - - they - - - you know,  
18 first they said they would. Now, they're questioning it.  
19 I better call the police myself. And I'm saying, is that  
20 unreasonable?

21 MR. ISAAC: It - - - it might not be  
22 unreasonable, but we're talking about a summary judgment  
23 motion. That's very reasonable.

24 JUDGE CANNATARO: That's why I said I think  
25 reasonable reliance plays into the duty question.

1 MR. ISAAC: Correct. And but I don't think in  
2 this case, just on the assumption of duty analysis that we  
3 have, and given the state of this record, I lose as a  
4 matter of law. So yes. Do I say that that - - - is it  
5 possible could they use that as a defense? Maybe. Could  
6 they use the reasonableness of what they did as a defense?  
7 Of course, it's not a 247 sub 1 Labor Law case where I'm  
8 asking for summary judgment. I'm just saying I don't lose  
9 as a matter of law on this record, when you construe the  
10 evidence in a light most favorable to me as the nonmovant.  
11 Thanks for listening.

12 CHIEF JUDGE WILSON: Thank you.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Christy Wright, certify that the foregoing transcript of proceedings in the Court of Appeals of Beadell v. Eros Management, No. 11 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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