

Salati v Jackson

2007 NY Slip Op 30433(U)

March 26, 2007

Supreme Court, New York County

Docket Number: 0101999

Judge: Rolando T. Acosta

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DECEMENT. **HON. ROLANDO T. ACOSTA**

PART 61

Index Number : 101999/2005

SALATI, LEONARD

vs

JACKSON, JANET

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

see attached

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

FILED
MAR 30 2007
NEW YORK COUNTY CLERK'S OFFICE

SO ORDERED
[Signature]
ROLANDO T. ACOSTA
J.S.C.
J.S.C.

Dated: 3/29/07

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Leonard Salati,

Plaintiff,

– against –

Janet Jackson, “John Doe” #1, “John Doe” #2,
Janet Jackson Enterprises, Inc., and Black Doll, Inc.,
10th Avenue Hospitality Group LLC d/b/a Club
Marquee, Knight Time Security of New York, Inc.,
and Titan Security, Inc.,

Defendants.

Janet Jackson, “John Doe” #1, and Black Doll, Inc.,

Third-Party Plaintiff,

– against –

10th Avenue Hospitality Group LLC d/b/a Club
Marquee, Knight Time Security of New York, Inc.,
and Titan Security, Inc.,

Third-Party Defendants.

The following documents were considered in reviewing Janet Jackson, “John Doe” #1 and Black Doll, Inc. (“Jackson defendants”)’s motion for summary judgment dismissing the amended complaint as well as all counter and cross-claims asserted against them, and 10th Avenue Hospitality Group LLC d/b/a Club Marquee (Club Marquee)’s cross-motion for summary judgment against Knight Time Security of New York, Inc., and Titan Security, Inc. (Knight Security”) for indemnification:

DECISION/ORDER

Index No. 101999/05

Seq. No. 3

Present:

Rolando T. Acosta
Supreme Court Justice

Third-Party Index No. 590793/05

FILED
MAR 30 2007
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COUNTY CLERK'S OFFICE

Papers	Numbered
Notice of Motion, Affirmation, Affidavits & Memorandum of Law	1-2 (Exhibits A-N)
Plaintiff's Affirmation in Opposition	3 (Exhibits A-C)
Knight Security's Affirmation in Opposition	4 (Exhibits A-C)
Notice of Cross-Motion & Affirmation	5 (Exhibits A-I)
Knight Security's Affirmation in Opposition to Cross-Motion	6
Jackson Defendant's Reply Affirmation & Memorandum of Law	7-8 (Exhibits A-H)
Club Marquee's Reply Memorandum of Law	9

Both the Jackson defendant's motion and Club Marquee's cross-motion are DENIED.

Background

According to plaintiff, he was assaulted by two African-American men, whom he assumed were Janet Jackson's body guards, when he attempted to deliver a message to her in Club Marquee on the night of February 4-5, 2004. Plaintiff described both men as between six feet to six feet six inches tall and weighing between 280 and 300 pounds.

Club Marquee had contracted with Knight Security/Titan Security ("Knight Security") to provide security guards at the club, but according to Knight Security and Club Marquee, Knight Security did not employ the guards in question. Instead, they posit, that the guards must have been hired by Jackson and/or her "boyfriend entertainer/ manager, Jermain Dupri." Eddie Troiano, a principal of Knight Security, averred that he "was informed by representatives of Club Marquee that Janet Jackson and Jermain [Dupri] were being attended to by their own security, including the two" African-American men, which Troiano had seen providing security for Dupri at other clubs. Patrick Robertson, Club Marquee's general manager, averred that the two African-American men appeared to be taking direction from a shorter Caucasian man.

According to Troiano, when plaintiff attempted to get Jackson's attention, the two

African-American guards physically removed plaintiff from her presence and handed plaintiff off to Troiano and Richard Velez (described by Troiano as "a Hispanic male, six feet tall, 190 pounds"), another Knight Security employee to escort him out of the club. Troiano Affidavit at ¶ 6 & 7. A Chris Margaritis was also present, whom Troiano describes as a "Caucasian male, six feet tall, 190 pounds." Troiano Affidavit at ¶ 7.

Plaintiff's deposition has been the only one taken thus far in this matter. Notwithstanding this fact, the Jackson defendants moved for summary judgment on their claim that Jackson had only one guard on the night in question, Joey Maldonado, and that Maldonado does not meet the description of a six foot 300 pound African-American man. According to both Jackson and Maldonado, Maldonado is "Caucasian," weighs only 180 pounds and is only five feet eight inches tall.¹ As proof, Maldonado attached a copy of his driver's license, which indicates that he is five feet eight inches tall, and a copy of his passport. Missing from their papers is any mention of Dupri and his body guards. Based on these allegations, the Jackson defendants move for summary judgment dismissing the complaint on the basis that plaintiff has failed to describe anyone who resembles Maldonado.

Analysis

It is well settled that the proponent of a motion for summary judgment must establish that "there is no defense to the cause of action or that the cause of action or defense has no merit," (C.P.L.R. §3212[b]), sufficiently to warrant the court as a matter of law to direct judgment in his or her favor. Bush v. St. Claire's Hospital, 82 N.Y.2d 738, 739 (1993); Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 (1985). This standard requires that the proponent of the motion "tender[] sufficient evidence to eliminate any material issues of fact from the case," *id.*, "by evidentiary proof in admissible form." Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions." C.P.L.R. §3212(b).

Where the proponent of the motion makes a prima facie showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender

1. In his Bill of Particular, plaintiff described the guards as "Black males." See Supplemental Bill of Particulars at ¶ 11. At his deposition, he described them as "African Americans." See, e.g. Salati Deposition at p. 61. The Court notes that Latinos come in all shades and many Latinos with strong African roots have complexions as dark as African Americans and are often described as being Black.

an acceptable excuse for his or her failure to do so. Vermette v. Kenworth Truck Company, 68 N.Y.2d 714, 717 (1986); Zuckerman v. City of New York, *supra*, 49 N.Y.2d at 560, 562. Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist. *Id.* at 562.

Viewing the facts in the light most favorable to plaintiff, the non-moving party, Fundamental Portfolio Advisors v. Tocqueville Asset Management, 7 N.Y.3d 96, 106 (2006), the Jackson defendants have failed to establish their prima facie entitlement to summary judgment. First of all, contrary to Jackson and Maldonado's claim, Maldonado's license and passport do not show that he is Caucasian. Indeed, to this Court's untrained eye, he appears to be a medium-dark Latino, which could pass as being African American. It also appears from these documents that he is stocky. In any event, it is for the jury to determine whether Maldonado matches plaintiff's description. Furthermore, even if he does not, there is evidence that there were other heavy set African-American guards present, possibly working for Jackson and/or Dupri.

Without further discovery, including the taking of Jackson's, Maldonado's and Dupri's deposition, this Court is not in a position to grant summary judgment dismissing the complaint. CPLR 3212(f). It should also be noted that even if the Jackson defendants had established their prima facie entitlement to summary judgment, there are numerous triable issues of fact, especially with respect to the number of guards actually working for Jackson and/or Dupri. Accordingly, the Jackson defendants' motion is denied.

Given the numerous triable issues of fact at this stage in this case, it is clear to the Court that counsel for the Jackson defendants attempted this "Hail Mary" motion to keep their clients from being deposed. Notwithstanding counsel's valiant effort to shield Ms. Jackson, counsel is advised that Article 31 grants no exemptions based on celebrity status, and this Court will scrutinize the discovery process to ensure compliance.

Club Marquee's cross-motion for an order granting summary judgment for defense and indemnification against Knight Security is also denied. Insufficient discovery has taken place for this Court to order Knight Security to indemnify Club Marquee. Club Marquee's contract with Knight Security provided, in relevant part, that:

[Knight Security] agrees to indemnify and save [Club Marquee] . . . harmless (a) from and against any and all claims, actions, damages, liability and expenses, including reasonable attorneys fees, in connection with . . . personal injury . . . arising in any manner from or out of the provision of security services under this Contract by [Knight Security] or its agents, and/or (b) from any and all claims of sole, joint or

contributing negligent or intentional acts or omissions of [Knight Security] and/or omission of [Club Marquee] . . . or their agents that allegedly contributed in part to the alleged harm. [Knight Security] shall not be obligated to [Club Marquee] . . . under this indemnity to the extent that a claim is made as a result of the sole acts, omissions or negligence on the part of solely [Club Marquee], without any claimed acts, omissions or negligence on the part of [Knight Security].

Affidavit of Patrick Robertson, Exhibit A. Although Robertson averred that Club Marquee did not hire any of the guards the night in question, without full discovery having taken place, it is not clear to the Court at this juncture whether Knight Security was responsible, either solely or in part, for plaintiff's injuries. Accordingly, it is hereby


ORDERED that Janet Jackson, "John Doe" #1 and Black Doll, Inc.'s motion for summary judgment dismissing the amended complaint as well as all counter and cross-claims asserted against them is DENIED; and it is further

ORDERED that 10th Avenue Hospitality Group LLC d/b/a Club Marquee's cross-motion for summary judgment against Knight Time Security of New York, Inc., and Titan Security, Inc. for indemnification is also DENIED.

This constitutes the Decision and Order of the Court.

March 26, 2007

ENTER

SO OF: 150 - 1

Rolando T. Acosta, J.S.C.
ROLANDO T. ACOSTA
J.S.C.

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