

**Salati v Jackson**

2009 NY Slip Op 31500(U)

June 23, 2009

Supreme Court, New York County

Docket Number: 101999/05

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON  
Justice

PART 85

Index Number : 101999/2005  
**SALATI, LEONARD**  
VS.  
**JACKSON, JANET**  
SEQUENCE NUMBER : 005  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE 3/16/09  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

\_\_\_\_\_ in this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED  
1-3  
4-9  
10-11

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is decided together with motion 06 in accordance with the annexed memorandum decision and order

N.B. -- Pre-trial conf scheduled for August 3, 2009 at 2PM.

**FILED**

JUN 25 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/23/09

JANE S. SOLOMON  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----x  
LEONARD SALATI,

Plaintiff,

-against-

Index No.: 101999/05

DECISION AND ORDER

JANET JACKSON, "JOHN DOE" #1,  
"JOHN DOE" #2, JANET JACKSON  
ENTERPRISES, INC., BLACK DOLL, INC.,  
10<sup>TH</sup> AVENUE HOSPITALITY GROUP, LLC  
d/b/a CLUB MARQUEE, KNIGHT TIME  
SECURITY OF NEW YORK, INC., and  
TITAN SECURITY, INC.,

Defendants,

-----x  
JANET JACKSON, "JOHN DOE" #1 and BLACK  
DOLL, INC.,

Index No.: 590793/05

Third-Party Plaintiffs,

-against-

10<sup>TH</sup> AVENUE HOSPITALITY GROUP, LLC  
d/b/a CLUB MARQUEE, KNIGHT TIME  
SECURITY OF NEW YORK, INC., and  
TITAN SECURITY, INC.,

Third-Party Defendants

-----x  
SOLOMON, J.

**FILED**  
JUN 25 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Plaintiff Leonard Salati alleges that he was beaten and sustained injuries when he was forcibly removed from a nightclub by security guards. Salati sued the nightclub owner, 10<sup>th</sup> Avenue Hospitality Group LLC d/b/a Club Marquee (Club Marquee); the company that provided security for the nightclub, Knight Time Security of New York d/b/a Titan Security, Inc. (KTS); Janet Jackson (Jackson), an individual who Salati alleges was involved

in the incident; and Black Doll, Inc. (Black Doll), a company that provides services, including security, for Jackson. Salati also sued two individuals as "John Doe" defendants, one of whom is identified as Joey Maldonado, a former New York City police officer who was hired by Black Doll to provide security for Jackson on the night in question.

In motion sequence 05, Jackson, Black Doll and Maldonado (together referred to as the Jackson Defendants) move for summary judgment dismissing Salati's complaint as against them, and to dismiss the cross-claims for indemnity and contribution by Club Marquee and KTS.<sup>1</sup> In motion sequence 06, Club Marquee moves for summary judgment dismissing Salati's complaint and the cross-claims by the Jackson Defendants and KTS, and for summary judgment on its cross-claims against them. Salati and KTS oppose the motions.

#### FACTS

Club Marquee is a nightclub on Tenth Avenue in Manhattan that caters to celebrity guests. It had a written contract with KTS to provide security services under which KTS

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<sup>1</sup> Salati initially sued only The Jackson Defendants, who in turn sued Club Marquee and KTS in a third-party action. They asserted counter-claims against the Jackson Defendants. Salati subsequently amended the complaint to sue the third-party defendants directly, so the third-party complaint and counter-claims are treated here as cross-claims among defendants.

agreed to provide properly trained, uniformed security guards at the club (Security Contract; Aff. of Steven H. Rosenfeld, Esq. in support of Club Marquee motion, Ex. N). KTS was obligated to procure insurance and to indemnify Club Marquee for any claims, including for reasonable attorney's fees, in connection with any personal injury arising from the provision of security services under the contract, except that KTS did not provide indemnity for claims made as a result of the sole acts, omissions or negligence of the club (Security Contract, paragraph 5).

The Security Contract was in effect on February 4 and 5, 2005. Late on the night of February 4, and early in the morning of February 5, Janet Jackson, a popular singer, was a guest at Club Marquee with her fiancé, Jermaine Dupri. Jackson was accompanied by a bodyguard named Joey Maldonado, and Dupri was accompanied by a bodyguard named Bob Lowry.

Salati also was a patron of Club Marquee that night. He heard from another guest that Jackson was present in the "VIP" area. He claimed that he knew Jackson, and offered to introduce her to a young woman he had met that evening, Claire Lyddan. At the VIP area, he noticed two security guards, described as heavy, well-built African American men who looked like body-builders, both dressed in black. Salati told Jackson that his cousin performed in a television show with her many years earlier, and they exchanged pleasantries. Salati asked Jackson to tell "her

bodyguards" that he was "okay", and she tapped the arm of one of the large men, said he was "okay", and the security guard left him alone. After a few moments, Salati left the VIP area, but remained in the club.

Salati alleges that, approximately forty minutes later, he returned to the VIP area with Ms. Lyddan and another young woman, Jennifer Dutko. The same two security guards were present. Salati leaned close to Jackson to speak to her, and this time a security guard took notice; Jackson allegedly told him it was OK. Salati claims that he then said goodnight to her, leaned over in an attempt to kiss her and slip her a piece of paper with his telephone number on it when one of the security guards grabbed him in a choke hold. Approximately six guards, all dressed in black, brought him downstairs from the VIP area and dragged him out of the club. He claims that he sustained injuries as a result.

Maldonado was Jackson's only bodyguard that night. He describes himself as Caucasian, five feet eight inches tall, weighing one hundred-eighty pounds. He testified at deposition that after Salati spoke with Jackson he returned with two women and told Maldonado that he wanted to bring the two women to say "hi" to Jackson. Maldonado told him no, and Salati walked away without incident. Maldonado denies witnessing a subsequent scuffle.

The principal of KTS, Eddie Troiano, testified at deposition that he was present at Club Marquee that night. Eight KTS security guards were on duty, with two guards stationed near Jackson. Troiano did not see when Salati initially was restrained, but claims that one of the bodyguards who came in with Jackson grabbed Salati and handed him off to KTS employees, who brought him down the stairs and deposited him outside the club. Troiano describes himself and one of the KTS guards (Chris Margaritas) as six feet tall and Caucasian, and the third KTS guard (Rich Valdez) as six feet tall and Hispanic.

Chris Margaritas testified that, before he was removed, Salati was screaming Jackson's name, and was asked to stop. Salati approached Jackson with an object in his hand that appeared threatening (apparently it was a pen and a paper with his number written on it), then he leaped toward her and fell on the floor, at which point Rich Valdez, the other KTS guard stationed near Jackson, grabbed Salati. Margaritas and other security guards, including those who came with Jackson, restrained Salati and removed him from the club.

Jackson testified that she saw Salati being held and led out of the club by two men dressed in black. She described them as Caucasian and taller than plaintiff, who is described as approximately five foot eight. At the time, Maldonado and Dupri's bodyguard, Lowry, were standing near her.

Ms. Lyddan and Ms. Dutko, the women Salati had invited to meet Jackson, confirm that Salati was warned several times to back away, that he persisted in an effort to make contact with Jackson, that he in fact spoke with Jackson briefly, and was suddenly grabbed and whisked away.<sup>2</sup> Ms. Lyddan testified that she saw a security guard suddenly grab Salati by the neck; the guard was approximately six feet five inches tall, and dressed all in black. Ms. Dutko, though closer, was looking away at the time and did not see who grabbed Salati. Ms. Dutko testified that she saw two security guards near Jackson, who she described as dark-skinned African-American men, approximately six feet two to six feet five inches tall, one weighing 215 pounds and the other 275 pounds, both dressed all in black. She ruled out Maldonado as being one of them.

Salati commenced this lawsuit against the Jackson Defendants on February 10, 2005; the complaint was later amended to add the other defendants. He claims \$10 million in damages, and demands \$100 million more in punitive damages. He alleges that Jackson's bodyguard, i.e., Maldonado, attacked him at the specific direction of Jackson or Black Doll. Alternatively, he alleges that Jackson and Black Doll negligently hired and

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<sup>2</sup> Ms. Dutko also testified that Salati offered to pay her \$200,000 if she would provide a favorable statement regarding the incident. She provided a statement, but did not want to be compensated, and there is no indication that she was.

retained Maldonado. As against Club Marquee, he alleges that it negligently hired and retained KTS with specific knowledge of its dangerous and hostile tendencies, and negligently failed to maintain the premises safely. Salati alleges that KTS gave specific orders to "John Doe #2", a KTS employee, to attack him without provocation, and that KTS negligently supervised, hired and retained "John Doe #2". The Jackson Defendants and Club Marquee have cross-claimed against each other for contribution and indemnification, but have stipulated to discontinue those claims since this motion was first made. Club Marquee has contribution and contractual indemnification cross-claims against KTS, and KTS has cross-claims for contribution, breach of contract and contractual indemnification against the Jackson Defendants and Club Marquee.

#### THE MOTIONS

The motion by the Jackson Defendants is granted. There is no evidence that Maldonado assaulted Salati, or that anyone assaulted Salati at Jackson's direction. On a prior motion made before discovery was complete, a different justice of this court denied summary judgment, opining that, to his "untrained eye", Maldonado "appears to be a medium-dark Latino, which could pass as being African-American . . . It is for a jury to determine whether Maldonado matches plaintiff's description" (Decision and

Order, dated March 26, 2007). The record before the court on these motions, however, not only establishes that Maldonado does not match plaintiff's description, but that Salati never accused Maldonado of participating in the assault. He claimed that a large African-American male dressed in black grabbed him around the neck, and surmised by his proximity to Jackson that the assailant must have been her personal bodyguard. There is no evidence upon which a jury could rationally find that Maldonado was the assailant, or that Jackson directed the assailant's actions or negligently failed to control him. There is no evidence that Black Doll negligently hired or retained Maldonado, so that claim must be dismissed as well.

The motion also is granted with respect to KTS's cross-claims. KTS presses the theory that Dupri's bodyguard, Lowry, grabbed Salati, and that he was an agent of Jackson and Black Doll. KTS further argues that Jackson negligently created a hazardous situation by speaking with Salati, which may have given him a false sense that he could persist in his demands to speak with Jackson in private without interference from security guards.

Since there is no evidence of negligence by the Jackson Defendants, there can be no claim for contribution. Moreover, KTS's breach of contract and contractual indemnity claims are dismissed because no contract exists. Accordingly, KTS's cross-

claims are dismissed as against the Jackson Defendants.

With respect to Club Marquee's motion, there is no evidence to support Salati's negligent hiring and retention claim, which is dismissed. Salati also claims that Club Marquee negligently failed as owner or lessee of the premises to take adequate protective measures for the safety of its patrons. A landlord has the duty to take steps to minimize the foreseeable danger from criminal acts when past experience alerts it to the likelihood of criminal conduct on the part of third persons (Mason v U.E.S.S. Leasing Corp., 96 NY2d 875 [2001], and see Camacho v Edelman, 176 AD2d 453 [1<sup>st</sup> Dept 1991]) (for the purposes of this discussion, the court considers the alleged assault on Salati to be a criminal act).

Salati alleges that he was assaulted by Jackson's bodyguard, i.e., another club patron, and by KTS personnel. There is no evidence of prior violence between patrons in Club Marquee, or of prior attacks by KTS guards. Arguably, the foreseeability of violence between patrons can be inferred by the fact that Club Marquee hired KTS to provide as many as eight security guards at one time. However, Club Marquee has shown that it took steps to provide security by hiring KTS, and given the lack of prior incidents and the general description of the club, Club Marquee has made a prima facie showing that these steps were adequate as a matter of law. Salati has proffered no

proof or legal authority to rebut this showing. Accordingly, the complaint is dismissed as against Club Marquee, and KTS's contribution claim likewise is dismissed.

Club Marquee's motion for summary judgment on its contractual indemnification claim is granted. KTS has admitted its participation in forcibly removing Salati from the club. Salati alleges in the complaint that one of his assailants, "John Doe #2", is a KTS employee (Amended Complaint, paragraphs 59-60), and he describes the assailants as dressed in black in the same manner as other KTS employees. Accordingly, this lawsuit arises at least in part out of the provision of security services under the Security Contract, so it is covered by the indemnification provision therein.

KTS argues that the indemnification under the Security Contract is void under General Obligations Law section 5-322.1 (GOL § 5-322.1), which provides as follows:

A covenant, promise, agreement or understanding in, or in connection with or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenances and appliances including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee against liability for damage arising out of bodily injury to persons or damage to property contributed to, caused by or resulting from the negligence of the promisee, his agents or employees, or indemnitee, whether such negligence be in whole or in part, is against public policy and is void and unenforceable;

KTS argues that security services are "maintenance" within the meaning of GOL § 5-322.1 because a nightclub needs security to "maintain" order and provide for the safety of its patrons, and to keep the club operating and productive. Club Marquee denies that the Security Contract is a maintenance contract.

To the extent that the term "maintenance" is ambiguous, light may be shed on its meaning by reference to the words associated with it in the statute (see, Jarecki v G.D. Searle & Co., 367 US 303 [1961], and 2A Sutherland, Statutes and Statutory Construction, § 47.16). Here, the associated terms in the statute all relate to the construction, alteration and repair of a structure, which clearly involve the physical upkeep of a building and not maintenance in the sense of providing for the financial well-being of business, as urged by KTS. Accordingly, the Security Contract is not covered by GOL § 5-322.1, so the indemnification clause is enforceable. It hereby is

ORDERED that the motion by the Jackson Defendants is granted, and the complaint and remaining cross-claims against them are dismissed; and it further is

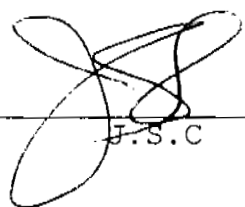
ORDERED that the cross-motion by Club Marquee is granted, and the complaint and all cross-claims against it are dismissed, and it is entitled judgment on its contractual indemnification cross-claim against KTS in an amount to be

determined at the trial of the remainder of the action; and it further is

ORDERED that counsel for the remaining parties shall appear in Part 55 for a pre-trial conference on August 3, 2009 at 2 PM.

Dated: June 23, 2009

ENTER:



J.S.C

JANE S. SOLOMON

**FILED**  
JUN 25 2009  
COUNTY CLERK'S OFFICE  
NEW YORK