

Natson v Jackson

2009 NY Slip Op 32749(U)

November 17, 2009

Supreme Court, New York County

Docket Number: 102451/05

Judge: Walter B. Tolub

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

PRESENT: WALTER S. TOLIB

PART 15

Index Number : 102451/2005
NATSON, LISA
vs.
JAKSON, JOHN
SEQUENCE NUMBER : 005
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAGES NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

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Dated: 11/17/09

WALTER S. TOLIB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASONS:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----X
LISA NATSON a/k/a "GOLDEN GIRL,"

Plaintiff,

-against-

Index No. 102451/05

JOHN JACKSON a/k/a "FABOLOUS,"
"JOHN DOE" # 1, "JOHN DOE" # 2,

Defendants.

-----X
JOHN JACKSON,

Third-Party Plaintiff,

-against-

RENRIK INTERNATIONAL SECURITY
CONSULTANTS, R.I.S.C. GROUP and
RODGER RENRIK,

Third-Party Defendants.

-----X
WALTER B. TOLUB, J.:

The defendant John Jackson (Jackson) moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint.

Facts

This is an action to recover damages for personal injuries suffered by the plaintiff Lisa Natson (Natson) when she was violently shoved to the ground by a security guard employed by the third-party defendants Renrick International Security Consultants, R.I.S.C. Group and Rodger Renrick (collectively, Renrick). The defendant, Mr. Jackson, was performing at a concert and

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Renrick was hired by Mr. Jackson to provide security at the concert. Renrick was the employer of "JB", the security guard assigned to protect Mr. Jackson.

The incident was videotaped from inside Mr. Jackson's bus as it was leaving the concert. In the videotape, Ms. Natson is seen walking slowly up the ramp from the arena's basement. Ms. Natson alleges that she had requested a ride from Mr. Jackson. Ms. Natson claims that angry words and threats passed. Mr. Jackson denies the entire encounter. Apparently continuing the disagreement, Ms. Natson is seen slowly walking in front of the bus as it drives up the ramp, impeding the bus's movement. The people on the bus begin to shout at Ms. Natson. A security guard appears and attempts to escort Ms. Natson to the side. Ms. Natson resists. Those on the bus are heard encouraging the security guard. Many of the comments are in jargon and are incomprehensible. The security guard looks back at the people on the bus. Several minutes pass. The guard continues to try to remove Ms. Natson from the bus's path. Those on the bus, apparently including Mr. Jackson, continue to escalate their loud verbal comments at the security guard. The incident suddenly escalates and the guard violently shoves Ms. Natson to the ground.

The complaint states causes of action against Mr. Jackson for the negligent hiring, retention and supervision of JB. Mr. Jackson argues that he is not JB's employer, rather JB was employed by Renrick, an independent contractor.

Mr. Jackson now seeks to dismiss the action arguing that since Renrick was an independent contractor, Mr. Jackson cannot be liable for JB's actions.

In opposition to the motion, the plaintiff Ms. Natson asserts that Mr. Jackson is JB's employer because he exercised sufficient control over JB and his job performance. and that Mr. Jackson is vicariously liable for JB's actions.

Discussion

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact from the case (*JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373 [2005]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). The failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient for this purpose (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). It is uncommon to grant summary judgment in a negligence action, even where the facts are uncontradicted (*Andre v Pomeroy*, 35 NY2d 361, 366-367 [1974]).

As a general rule, a principal is not liable for the wrongful acts of a retained independent contractor because the principal has no right to control the manner in which the work is to be done (*Kleemen v Rheingold*, 81 NY2d 270, 273 [1993]).

However, in opposition to the motion, Ms. Natson presents evidence to establish that the Mr. Jackson exercised sufficient control over the method or means by which JB performed his work, thereby imposing liability on Mr. Jackson (*Feliberty v. Damon*, 72 NY2d 112, 118 [1988]). For example, Mr. Jackson has testified that he and his management had the ability to give “special instructions” to security as needed (Defendant Ex. B Tr. 39-40).

[*5]

The key premise for the general rule against imposing vicarious liability is the principal's lack of power to regulate the manner in which the work is performed. That is an open question especially in light of the videotape showing that Mr. Jackson may have actively encouraged the security guard to violence.

Furthermore, Mr. Jackson fails to meet his initial burden of demonstrating his entitlement to summary judgment dismissing the cause of action to recover damages for negligent hiring, insofar as it is asserted against him, because Jackson submits no proof on this issue.

There remain a number of questions of fact unresolved including (1) whether Renrick was an independent contractor or exercised sufficient control to be totally liable for the incident; (2) if Renrick was an independent contractor, whether the defendant Jackson undertook to supervise Renrick; (3) whether the security guard was acting within the scope of his employment when he assaulted Ms. Natson, (4) whether the security guard's actions could have reasonably been anticipated by Mr. Jackson, and (5) whether Mr. Jackson consented to or ratified the assault on the plaintiff. Accordingly, it is


ORDERED that the motion is denied.

Counsel for the parties are directed to contact the Clerk of the Court to schedule a pre-trial date for this matter.

This constitutes the decision and order of the Court.

Dated: 11/17/09

ENTER:



Walter B. Tolub J.S.C.

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