

**Evans v Norecaj**

2018 NY Slip Op 30754(U)

March 21, 2018

Supreme Court, Bronx County

Docket Number: 301983/13

Judge: Julia I. Rodriguez

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

-----X **Index No. 301983/13**

Freddie Evans,  
Plaintiff,

-against-

DECISION & ORDER

Robert Norecaj et al.,  
Defendants.

Present:  
Hon. Julia I. Rodriguez  
Supreme Court Justice

-----X  
Dolphin Restaurant Bar Lounge et al.,  
Third-Party Plaintiffs,

-against-

**Index No. 83873/14**

APV Valet Parking Corp., et al.,  
Third-Party Defendants.

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Recitation, as required by CPLR 2219(a), of the papers considered in review of the summary judgment motions of defendants AVP Valet Parking Corp., and Dolphin Restaurant Lounge and WSH Group LLC, respectively.

<u>Papers Submitted</u>	<u>Numbered</u>
AVP Notice of Motion, Affirmation & Exhibits	1
Pls. Affirmation in Opposition & Exhibit	2
Reply Affirmation	3
Dolphin Notice of Motion, Affirmation & Exhibits	4
Gjurashaj Affirmation in Opposition & Exhibit	5
Reply Affirmation	6
Reply Affirmation	7

In the instant action, plaintiff alleges that on September 27, 2011 he sustained injuries when he was struck by a vehicle, owned by defendant Mark Gjurashaj, while riding his bicycle on the roadway in front a restaurant owned by defendants/third-party plaintiffs Dolphin Restaurant Bar Lounge and WSH Group 1 LLC (Dolphin).

Defendant APV Valet Parking Corp. ("APV") now moves for summary judgment, pursuant to CPLR 3212, dismissing the third-party complaint and all cross-claims, on the grounds that: (1) at the time of the accident, Rober Norecaj, the operator of the subject vehicle, was not acting as an employee of APV; (2) the agreement between Dolphin and APV does not

require APV to indemnify Dolphin; (3) APV did not breach its contract with Dolphin; and (4) APV was not negligent and, therefore, does not common-law indemnification or contribution to Dolphin.

Dolphin separately moves for summary judgment, pursuant to CPLR 3212, dismissing the complaint and all cross-claims, on the ground that Dolphin did not cause or contribute to the accident in any way.

In support of summary judgment, both APV and Dolphin submitted the deposition testimony of plaintiff, Mark Gjurashaj and Albert Vukdedaj. APV also submitted copies of a work schedule for the date of the accident and the contract between Dolphin and APV in effect at the time of the accident. Dolphin also submitted the deposition testimony of Jimmy Rugova.

Of note, at his deposition plaintiff testified as follows: At the time of the accident, he was traveling along Main Street, Yonkers, NY, approaching Dolphin Restaurant. When he was in front of the driveway adjacent to the restaurant, he was struck by a vehicle making a left turn into the driveway. The operator of the vehicle was wearing a Dolphin uniform, including a black vest. He had ridden his bike past the Dolphin restaurant about three or four times a week for six years and always saw “the guys out there working” wearing the same uniform as the driver was wore. The driver of the vehicle that struck him brought the vehicle into the driveway, stopped in front of the restaurant, and the owner of the car got in the car. He knew the operator was a valet attendant because he was wearing a uniform.

The only personal knowledge of the circumstances surrounding the accident testified to by Mark Gjurashaj at his deposition consists of the following: At the time of the accident, he owned a 1999 Jeep Cherokee, the vehicle involved in the accident. On the night at issue, he gave his son Martin Gjurashaj permission to take the vehicle to Dolphin Restaurant with his wife to have dinner. Martin worked as a waiter at the restaurant but he was “off” on the date of the accident.

At his deposition, Albert Vukdedaj, the sole owner of APV, testified as follows: APV provides valet parking services to restaurants, and has been providing those services to Dolphin Restaurant since 2007 pursuant to a written contract. He learned in January or February of 2012,

that the instant lawsuit had been commenced. His employees were located “in the center of” three restaurants for which APV provided valet parking services, Xaviars, Dolphin and Hudson Café. Each restaurant would get a permit from the City of Yonkers for certain parking spaces in a nearby lot and notify him of the spaces where his employees could park vehicles. He did most of the office work and assigned his 25-30 employees to various locations. Usually, for every fifty people with a dinner reservation they assign one parking attendant at a restaurant. He calls his employees to let them know where to go to work at any given time. At Dolphin, he had the same people there four days a week but “not the same people six, seven days a week.” Lucaj would have been at Dolphin on Thursday, Friday and Saturday. On the date of the accident, Robert Norecaj was an employee of APV. He did not have a set schedule but worked “as needed.” A work schedule was maintained on a computer. Hard copies were kept but were destroyed in a flood. He had a hard copy of the schedule for September 26, 27, 28 and 29 because an insurance company had asked him to provide it when he first learned of the accident. The schedule indicates that O. Cespedes worked both shifts, 11:00 a.m. and 4:00 p.m. on Thursday, September 27<sup>th</sup> (the date of the accident). Robert Norecaj worked for APV for two years. After the accident, he asked Norecaj what had happened and why he was at the restaurant that night because he was not supposed to be working that day but Norecaj “had nothing to say because he was never scheduled to work.” He asked Norecaj why he was driving Gjurashaj’s car that night and Norecaj told him that he knew the valet attendants would not accept that car because they knew it had bad breaks; he did not want to embarrass Gjurashaj in front of the girl he was with so Norecaj parked the car. After this incident, Vukdedaj suspended Norecaj for two weeks. All APV employees wear uniforms but they do not wear black vests. He does not know if Norecaj was wearing a uniform at the time of the accident.

At his deposition, Jimmy Rugova testified as follows: He has been the General Manager at Dolphin Restaurant for six and one-half years. He was working at the time of the accident. It was a busy night and he first learned of the accident when an ambulance arrived. A valet service, APV or AVP, takes the cars of patrons to a municipal lot located about a block and a half away from the restaurant. Dolphin had a contract with APV in 2011 for valet parking

services. He dealt with Albert at APV on a daily basis regarding its services. Martin Gjurashaj was an employee of Dolphin Restaurant in 2011. He came to learn that it was Gjurashaj's vehicle that struck the plaintiff and that one of the valet attendants was operating it at that time. When he received papers in this lawsuit, he spoke with Albert at APV and "there was some sort of acknowledgment that there had been an accident."

The contract between Dolphin and APV has no indemnification provision requiring APV to indemnify Dolphin or vice versa. Of note, the contract indicates that the uniform of APV employees includes a blue vest with APV insignia.

In opposition to APV's summary judgment motion, Mark Gjurashaj submitted the deposition testimony of Jimmy Rugova and points to his testimony that he came to learn that it was Gjurashaj's vehicle that was involved in the accident and that a valet attendant was operating the vehicle at the time of the accident. APV also points to plaintiff's testimony that the driver of the vehicle that struck him was wearing a Dolphin uniform.

In opposition to both motions, plaintiff submitted a copy of the police report for the incident which indicates that Robert Norecaj was operating the vehicle which struck plaintiff. While this document is not in admissible form, it is supported by other admissible evidence, i.e., the deposition testimony of Albert Vukdedaj .

\* \* \* \* \*

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issues of fact and the right to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 487 N.Y.S.2d 316 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court; the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted, and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *See Aasaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 544 N.Y.S.2d 834 (1<sup>st</sup> Dept. 1989). Summary judgment will be granted only if there are no material, triable issues of fact. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957).

Here, based upon the parties' submissions, triable issues of fact exist, at a minimum, as to whether Robert Norecaj was operating the vehicle when it struck plaintiff; whether Robert Norecaj was working as an APV valet parking attendant at the time of the accident; the negligence of Robert Norecaj, APV and/or Dolphin; and plaintiff's comparative fault, if any. *See Spadaro v. Parking Systems Plus, Inc.*, 113 A.D.3d 833, 979 N.Y.S.2d 627 (2<sup>nd</sup> Dept. 2014).

Accordingly, Dolphin's motion for summary judgment is **denied** in its entirety. Inasmuch as the contract between Dolphin and APV contains no indemnification provision, Dolphin's claim against APV for contractual indemnification must fail. As such, APV's motion for summary judgment is **granted solely to the extent that** Dolphin's third-party claim against APV for contractual indemnification is hereby dismissed; otherwise, the motion is denied.

Dated: Bronx, New York  
March 21, 2018

  
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Hon. Julia I. Rodriguez, J.S.C.