

**Jones v Jones**

2021 NY Slip Op 33548(U)

June 23, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 620266/2018

Judge: Martha L. Luft

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This opinion is uncorrected and not selected for official publication.

Short Form Order

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. Martha L. Luft  
Acting Justice Supreme Court

DECISION AND ORDER

\_\_\_\_\_  
ANTHONY J. JONES, x

Plaintiff,

-against-

RODNEY JONES, MIMOSE S. JONES and  
JEAN MICHEL JOSEPH,

Defendants.

\_\_\_\_\_  
RODNEY JONES, MIMOSE S. JONES and  
JEAN MICHEL JOSEPH, x

Third-Party Plaintiffs,

-against-

STAG ENTERTAINMENT, INC. and  
NEIL BAILEY,

Third-Party Defendants.

\_\_\_\_\_ x

Mot. Seq. No.: 001 - MD  
Orig. Return Date: 03/23/2021  
Motion Submit Date: 03/23/2021

**PLAINTIFF'S ATTORNEY**

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**DEFENDANTS' ATTORNEYS**

Christi M. Kunzig, Esq.  
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Plaintiffs Rodney Jones, Mimose S. Jones  
and Jean Michel Joseph  
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The Cahrrington Firm, PC  
Attorneys for Third-Party Defendants Stag  
Entertainment, Inc. and Neil Bailey  
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Upon the e-filed documents numbered 18 through 33, it is

**ORDERED** that the motion by the defendants/third-party plaintiffs Rodney Jones, Mimose S. Jones, and Jean Michel Joseph for, inter alia, an order granting summary judgment dismissing the complaint in its entirety is denied; and it is further

**ORDERED** that this matter is scheduled for a virtual compliance conference on **Thursday July 22, 2021 at 10:00am** via Microsoft Teams, a link to which will be provided to the emails addresses on file with the New York State Courts Electronic Filing system (NYSCEF)

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with Andrea Mims, law clerk to Judge Luft, for the purposes of discussing what, if any, further steps are necessary to certify this matter ready for trial, or if this matter is ready for trial, the parties may contact chambers via email at [sufluft@nycourts.gov](mailto:sufluft@nycourts.gov) to receive a blank certification order with instructions.

This is an action to recover damages allegedly sustained by the plaintiff Anthony J. Jones as a result of an incident that occurred on August 18, 2018. By his verified complaint, as amplified by his verified bill of particulars, the plaintiff alleges, among other things, that, while he was leaving a pool party at a residence owned by the defendants Mimose S. Jones and Jean Michel Joseph, he was assaulted by unknown third parties, causing him serious personal injuries. The plaintiff further alleges that the defendant Rodney Jones resided at the subject residence and controlled same. The defendants commenced a third party action against Stag Entertainment, Inc. and Neil Bailey for contribution and indemnification, alleging that these parties promoted and conducted the August 2018 party, that they sold tickets to same, and that they sold alcohol at the event to party patrons. On August 25, 2018, nonparty Carlyle Baker was shot during a party at the same premises.

The defendants now move for summary judgment dismissing the complaint as asserted against them, arguing, *inter alia*, that the defendant Rodney Jones did not own the subject premises nor was he present at the time of the party, thus, he did not owe the plaintiff a duty of care, and that the defendants Mimose Jones and Jean Joseph did not breach their duty to ensure the safety of the premises, as the plaintiff's assault was unforeseeable. In support, the defendants submit, among other things, transcripts of the parties' deposition testimony and an affirmation of their attorney. The plaintiff opposes the motion, arguing, *inter alia*, that there are triable issues of fact as to whether the defendants had notice of the previous parties being held at the premises, precluding an award of summary judgment. In opposition, the plaintiff submits several documents, including an affirmation of his attorney, transcripts of nonparty Dylan Jones's deposition testimony in relation to another civil matter related to the August 25, 2018 incident, and a copy of a newspaper article, published August 30, 2018.

As a general rule, liability for a dangerous condition on property must be predicated upon ownership, occupancy, control, or special use of the property (*see Reynolds v Avon Grove Props.*, 129 AD3d 932, 12 NYS3d 199 [2d Dept 2015]; *Chernoguz v Mirrer Yeshiva Cent. Inst.*, 121 AD3d 737, 994 NYS2d 362 [2d Dept 2014]; *Gover v Mastic Beach Prop. Owners Assn.*, 57 AD3d 729, 869 NYS2d 593 [2d Dept 2008]). In addition, generally, landowners have a duty to exercise reasonable care to prevent harm to visitors on their property (*see D'Amico v Christie*, 71 NY2d 76, 85, 524 NYS2d 1, 5 [1987]; *Hegarty v Tracy*, 125 AD3d 804, 4 NYS3d 254 [2d Dept 2015]; *Kranenberg v TKRS Pub, Inc.*, 99 AD3d 767, 952 NYS2d 215 [2d Dept 2012]). A landowner is obligated to take reasonable precautionary measures to minimize the risk of criminal acts and make the premises safe for visitors when the owner is aware, or should be aware, that there is a likelihood of conduct on the part of third parties that would endanger visitors (*see Mason v U.E.S.S. Leasing Corp.*, 96 NY2d 875, 878, 730 NYS2d 770, 772 [2001]);

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*Gentile v Town & Village of Harrison*, 137 AD3d 971, 27 NYS3d 207 [2d Dept 2016]; *Diaz v Sea Gate Assn., Inc.*, 98 AD3d 1075, 951 NYS2d 209 [2d Dept 2012]).

However, a landowner is not an insurer of a visitor's safety, and as such, has no duty to protect visitors against unforeseeable and unexpected assaults (*see Maheshwari v City of New York*, 2 NY3d 288, 294, 778 NYS2d 442 [2004]; *Covelli v Silver Fist, Ltd.*, 167 AD3d 980, 91 NYS3d 181 [2d Dept 2018]). To establish that criminal acts on the premises were foreseeable, the criminal conduct at issue must be shown to be reasonably predictable based on the prior occurrence of the same or similar criminal activity at a location sufficiently proximate to the subject location (*see Jacqueline S. v City of New York*, 81 NY2d 288, 295, 598 NYS2d 160, 163 [1993]; *Gentile v Town and Village of Harrison*, *supra*; *Tambriz v P.G.K. Luncheonette, Inc.*, 124 AD3d 626, 628, 2 NYS3d 150 [2d Dept 2015]). Without evidentiary proof of notice of prior criminal activity, the owner's duty reasonably to protect those on the premises from such activity never arises (*see Gentile v Town & Village of Harrison*, *supra*; *Ishmail v ATM Three, LLC*, 77 AD3d 790, 791-792, 909 NYS2d 540 [2d Dept 2010]; *Beato v Cosmopolitan Assoc., LLC*, 69 AD3d 774, 776, 893 NYS2d 578 [2d Dept 2010]). Moreover, liability for a premises condition may be imposed only for injuries that occurred on a defendant's property or in an area under the defendant's control (*see Covelli v Silver Fist, Ltd.*, 167 AD3d 980, 91 NYS3d 181 [2d Dept 2018]).

At his deposition, the plaintiff testified that he went to the premises on August 18, 2018 because he saw a flyer advertising a pool party on Instagram. The plaintiff further testified that he arrived at the premises between 9:30 and 10:00 pm, that he bought a ticket to enter for \$20, and that he was patted down by security staff. In addition, the plaintiff testified that a bar had been set up on the premises and alcohol was sold at the party, and that he estimated there to be about 30 to 40 people in attendance. The plaintiff testified that, as he was leaving the party, a group of 7 to 8 people followed him from the backyard to the driveway, where he was hit by one of them with an unknown object, and his money and cell phone were taken from him.

At her deposition, Ms. Jones testified that she is one of the owners of the premises, and that she purchased the home in June 1999. Ms. Jones further testified that she was not at home the night of August 18, 2018, that she was working an overnight shift, and that she arrived home some time after the party ended. Ms. Jones further testified that she did not recall whether there were any parties at the premises at any time prior to August 2018, and that her son, nonparty Dylan Jones, told her about the August 18, 2018 party the next day, but he did not tell her that there was security, music, or alcohol. However, the Court notes that Ms. Jones was unable to recall many facts and details or to give more detailed answers to the questions posed to her by the plaintiff's counsel.

At his deposition, Mr. Joseph testified that, although he is listed on the deed to the subject premises, he has never lived there, and that he has only been in the home two times. As such, he did not know of any parties at the premises at any time prior to August 2018.

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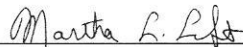
At his deposition, Rodney Jones testified that, although he lived part-time at the subject property, he was not present on August 18, 2018, and that he does not have any ownership interest in the premises. In addition, Mr. Jones testified that he was not at the premises on August 18, 2018, and that he did not know of any parties at the home prior to that date.

However, the defendants' submissions fail to eliminate triable issues of fact as to whether they breached their duty to exercise reasonable care to prevent harm to visitors to their property (see *D'Amico v Christie*, *supra*; *Hegarty v Tracy*, *supra*; *Kranenberg v TKRS Pub, Inc.*, *supra*). Ms. Jones's deposition testimony reflects that she claimed a lack of memory as to whether any parties were held at the subject premises before the plaintiff's assault or whether the police had previously been called to the premises for any reason, and as such, her testimony is insufficient to establish that the August 18, 2018 incident was unforeseeable and unexpected (see *Zhang v ABC Corp.*, 194 AD3d 990, \_\_\_ NYS3d \_\_\_, 2021 NY Slip Op 03213 [2d Dept 2021]; *cf. Maheshwari v City of New York*, *supra*; *Covelli v Silver Fist, Ltd.*, *supra*). In addition, Rodney Jones' deposition testimony indicates that he lived at least part-time at the subject premises, and his testimony fails to show his freedom from liability, as there was no testimony as to his control, or lack thereof, over the property (see *Covelli v Silver Fist, Ltd.*, *supra*; *Reynolds v Avon Grove Props.*, *supra*; *Chernoguz v Mirrer Yeshiva Cent. Inst.*, *supra*; *Grover v Mastic Beach Prop. Owners Assn.*, *supra*). Further, although Mr. Joseph's testimony establishes, *prima facie*, that he is an out-of-possession owner of the subject premises (see *Valenti v 400 Carlls Path Realty Corp.*, 52 AD3d 696, 861 NYS2d 357 [2d Dept 2008]), the defendants' submissions fail to demonstrate that he lacked control over the premises so as to preclude liability for the plaintiff's assault (see *Covelli v Silver Fist, Ltd.*, *supra*; *Reynolds v Avon Grove Props.*, *supra*; *Chernoguz v Mirrer Yeshiva Cent. Inst.*, *supra*; *Grover v Mastic Beach Prop. Owners Assn.*, *supra*). As the defendants failed to make a *prima facie* showing of entitlement to summary judgment, the motion is denied, regardless of the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985])

Accordingly, the defendants' motion is denied in its entirety.

E N T E R

Date: June 23, 2021  
Riverhead, New York

  
HON. MARTHA L. LUFT, A.J.S.C.

Final Disposition

Non-Final Disposition