

**Pihskiold v Jane St. Hotel, LLC**

2025 NY Slip Op 31858(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 150236/2019

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 150236/2019

PAULINA PANAGIOTA PIHSKIOLD,
Plaintiff,

MOTION DATE 05/14/2024

MOTION SEQ. NO. 004

- v -

JANE STREET HOTEL, LLC, THE JANE HOTEL, JANE
STREET HOSPITALITY, LLC, ACUMEN SECURITY, INC.,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 103, 104, 105, 106,
107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127,
128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148,
149

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of March 4, 2025, Plaintiff
Paulina Panagiota Pihskiold's ("Plaintiff") for summary judgment on the issue of liability is
denied. Defendant Acumen Security, Inc.'s ("Acumen") motion for summary judgment dismissing
Plaintiff's complaint and all crossclaims asserted against them is denied. Defendants Jane Street
Hotel LLC, the Jane Hotel, and Jane Street Hospitality, LLC's (collectively "Jane Hotel") motion
for summary judgment on its crossclaims for contractual indemnification against Defendant
Acumen is denied.<sup>1</sup>

I. Background

On October 7, 2017, Plaintiff, who was meeting friends from Sweden, arrived at the Jane
Hotel ballroom at 2:00 a.m. (NYSCEF Doc. 109 at 27; 31). The room was crowded, and everyone
was dancing (Id. at 35). Suddenly, the couch tipped over, and the couch and the people dancing on

<sup>1</sup> This case, along with the pending motion, was transferred to Part 33 on January 20, 2025.

it fell on Plaintiff (*Id.* at 48). At the time of Plaintiff's accident, the Jane Hotel employed Acumen to provide security (NYSCEF Doc. 110 at 12). A representative from the Jane Hotel testified it was Acumen's job to ensure guests were not standing on furniture (*Id.* at 30).

A representative from Acumen testified it worked primarily in the ballroom of the Jane Hotel, the site of Plaintiff's accident, where there were typically four to five guards stationed (NYSCEF Doc. 111 at 13 and 15). The Acumen representative testified dancing on the furniture was allowed (*Id.* at 25). He also testified he had never seen furniture tip over at the Premises, nor had he ever seen anyone fall off furniture (*Id.* at 29). He didn't believe dancing on the furniture was dangerous because the furniture was low to the ground (*Id.* at 37). Eric Aguirre, who frequently disc jockeyed at the Jane Hotel's ballroom, testified in his eight to nine years working there he had never seen a couch topple over (NYSCEF Doc. 112 at 17).

Now, all parties move or cross move for summary judgment. Plaintiff moves for summary judgment on the issue of liability; Acumen cross-moves for summary judgment dismissing all claims and crossclaims asserted against it; and the Jane Hotel cross moves for summary judgment on its contractual indemnification claim asserted against Acumen.

## II. Discussion

### A. Standard

Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g.*, *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340,

342 [1<sup>st</sup> Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

### **B. Plaintiff's Motion**

Plaintiff's motion for summary judgment on the issue of liability is denied. Viewing the facts in the light most favorable to the non-movants, there remain issues of fact as to the foreseeability of a couch tipping over and injuring a patron (*see, e.g. Boderick v RY Management Co., Inc.*, 71 AD3d 144, 149 [1st Dept 2009]). As is routinely held, the questions of proximate cause and foreseeability are generally an issue of fact for the jury (*Crandall v Equinox Holdings, Inc.*, 231 AD3d 472, 474 [1st Dept 2024]; *Gonzalez v City of New York*, 133 AD3d 65, 67 [1st Dept 2015]). Such is the case here, where none of the witnesses questioned could ever recall a time when a couch, which was low to the ground, tipped over and harmed a patron. Given the applicable standard on a motion for summary judgment, and given the record before the Court, the motion is denied, with a jury to decide whether the tipping over of a couch onto a patron standing nearby was foreseeable.

### **C. Acumen's Cross Motion**

Acumen's cross motion seeking dismissal of all claims and cross claims asserted against it is denied. Viewing the facts in the light most favorable to the non-movants, Acumen may be found liable for exacerbating the situation by (a) failing to stop patrons from getting so rowdy that a couch fell on someone or (b) failing to keep patrons away from other patrons who were getting so rowdy that they posed a threat to others (*see generally Espinal v Melville Snow Contractors*, 98 NY2d 136, 141-42 [2002] [contractor who provides services and exacerbates dangerous condition may be liable to third-parties]). Indeed, there is testimonial evidence from the disc jockey, Erick Aguirre that Acumen had intervened in a prior incident to prevent patrons from climbing a

fireplace. A jury could plausibly find that Acumen, who had multiple security guards positioned in the ballroom, exacerbated the situation by failing to stop the rowdiness on the couch before Plaintiff got hurt (*see, e.g. Salomon v United States Tennis Association*, 181 AD3d 446, 446-67 [1st Dept 2020]; *Cornell v 360 W. 51<sup>st</sup> Street Realty, LLC*, 51 AD3d 469, 470 [1st Dept 2008]).

Moreover, the diametrically opposed testimonial evidence with respect to Acumen's duty to prevent dancing on furniture creates an issue of fact. The Jane Street representative testified Acumen was supposed to ask guests dancing on furniture to stop, with the Acumen representative testified dancing on furniture was allowed. Determining credibility is exclusively in the province of the jury (*Duley v S & N Rugova Properties LLC*, 236 AD3d 544, 544 [1st Dept 2025]). Thus, Acumen's cross motion is denied (*see also Kuti v Sera Security Services*, 182 AD3d 401 [1st Dept 2020]).

#### **D. Jane Hotel's Cross Motion**

Jane Hotel's cross motion for summary judgment on its cross claim for contractual indemnification against Acumen is denied. There has yet to be any finding of negligence, and there remain issues of fact as to which parties were negligent, making any grant of contractual indemnification premature (*Radeljic v Certified of N.Y., Inc.*, 161 AD3d 588 [1st Dept 2018]; *Maldonado v South Bronx Dev. Corp.*, 66 AD3d 612, 613 [1st Dept 2009]). "An indemnification clause does not apply to the mere assertion of claims" (*Healy v 169 E. 69<sup>th</sup> Street Corp.*, 189 AD3d 680, 681 [1st Dept 2020] quoting *JPMorgan Chase Bank, N.A. v Luxor Capital, LLC*, 101 AD3d 575, 575-76 [1st Dept 2012]). Therefore, the cross motion is denied, without prejudice, with leave to renew upon a finding of negligence against Acumen (*see also Cook v Consolidated Edison Co. of N.Y., Inc.*, 51 AD3d 447, 448 [1st Dept 2008]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment and the defendants' respective cross motions for summary judgment are all denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/23/2025  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE