

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

PRESENT: _____
Justice

PART _____

0106352/1997

IACONO, JOHN
vs
MSG HOLDINGS, L.P.

SEQ 9

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

motion to/for _____

PAPERS 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 granted in accordance with the accompanying decision*

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

FILED
JUL 21 2005
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/21/05

Ley
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 2**

-----X
JOHN IACONO and NANCY IACONO

**Decision / Order
Index No. 0106352/1997**

Plaintiff,

- against -

**MSG HOLDINGS, L.P., MADISON SQUARE GARDEN
CORP. and MADISON SQUARE GARDEN CENTER
INC.,**

Defendants.

-----X

LOUIS B. YORK, J.:

In this action, defendants MSG Holdings, L.P., Madison Square Garden Corp., and Madison Square Garden Center, Inc. (collectively "MSG") move for summary judgment against plaintiffs John Iacono and Nancy Iacono. Defendant asserts that there are no material issues of fact and that plaintiffs cannot make out a prima facie case of negligence. The defendant also asserts that plaintiffs' claim is barred due to contributory negligence. Plaintiffs' affidavit in opposition to summary judgment clarifies the causes of action originally made out in their 190 paragraph, 35-page complaint. The plaintiffs' claims are that MSG failed to provide adequate and/or reasonable security to prevent the riot and that MSG was negligent in its failure to control the riot once it began.

This lawsuit is the product of a riot that took place at the conclusion of the July 11, 1996 heavyweight boxing match between Riddick Bowe and Andrew Golota. The riot was captured on film as part of the HBO telecast of the match. Golota appeared to be winning the bout and well on his way to a major upset, but somehow he did not stop hitting Bowe below the belt. Golota was disqualified in the seventh round because of the repeated low-blows. Soon after, the riot began. Members of both fighters' camps and entourages engaged one another in the ring, and the riot subsequently spread all over Madison Square Garden; individual fights broke out in the lobby and outside the building.

Plaintiff John Iacono is a photographer for Sports Illustrated who was assigned to work the Bowe-Golota fight. During the fight he was situated directly next to the ring with his elbows on the edge of the ring. When the fight was stopped, Mr. Iacono moved onto the apron of the ring (the edge of the ring outside of the ropes) to take victory photographs. While he attempted to take these pictures, the riot began. Mr. Iacono continued to photograph what he described as the "chaotic" scene at the ring for approximately twenty minutes, until he was punched in the face by an unknown person standing inside the ring.

In his deposition, Mr. Iacono explained that he remained on the apron because "It's my job, I am a journalist," and stated that he did not pack up and leave right away because he "was afraid things were going on and my camera would be robbed." (Iacono Dep. at 51-2.) Mr. Iacono added in his current affidavit that "I believed it would be more dangerous for me to pack up and try to leave through the crowds fighting all around on the floor level of Madison Square Garden. The safest place for me, I

thought, was on the outer apron separated by ropes from the fighting taking place below on the floor surrounding the ring.” (Iacono Aff. at 2.)

On the day of the incident, Ralph Palma was the Manager of Event Operations and Garden Services for MSG; currently, he is Director of Event Operations and Garden Services. Mr. Palma stated in his deposition that there were approximately 100 security guards assigned to the Bowe-Golota fight. Mr. Palma and MSG Vice President John Fahy, both employees of MSG, decided where to post the security guards during the fight. Mr. Palma stated that approximately 40% of the 100 security guards were assigned to ringside, and it is clear from the record and the video evidence that MSG security quickly entered the fray.

DISCUSSION

The defendant moves for summary judgment in this action. The basis for defendant's motion is that there are no material issues of fact, that plaintiffs cannot make out a prima facie case of negligence, and that plaintiffs' action is barred by contributory negligence. As stated above, plaintiffs claim that MSG failed to provide adequate and/or reasonable security to prevent riot and that MSG was negligent in its failure to control the riot once it began.

The plaintiffs present a jury question on the claim of inadequate and/or reasonable security with regard to preventing the riot. It is clear MSG owes a duty of reasonable care to Mr. Iacono. See Maheshwari v. City of New York, 2 N.Y.3d 288, 294, 778 N.Y.S.2d 442, 445 (2004); Rotz v. City of New York, 143, A.D.2d 301, 304, 532 N.Y.S.2d 245, 247 (1st Dept 1988). “Foreseeability merely determines the scope

of the duty once the duty is determined to exist.” Maheshwari, 2 N.Y.3d at 294, 778 N.Y.S.2d at 445. The scope is then defined by “past experience,” id., and the “likelihood of conduct on the part of third persons . . . which is likely to endanger the safety of the visitor.” Nallan v. Helmsley-Spear, Inc., 50 N.Y.2d. 507, 519, 429 N.Y.S.2d 606, 613 (1980) (quoting Restatement (Second) of Torts § 344, cmt. f (1977)).

To withstand summary judgment on the first claim that MSG's security was inadequate and/or unreasonable in preventing the riot, plaintiffs must show that there is a question of fact as to whether the riot and the resulting injury to Mr. Iacono were foreseeable. See Maheshwari, 2 N.Y.3d at 294, 778 N.Y.S.2d at 445. If plaintiffs can show that the attack may have been foreseeable, then the defendant's duty could be expansive enough to warrant an inquiry into the adequacy and/or reasonableness of MSG's security for this event. According to the First Department in Rotz v. City of New York, “[i]ssues of negligence, foreseeability and proximate cause involve the kinds of judgmental variables which have traditionally, and soundly, been left to the finders of fact to resolve even where the facts are essentially undisputed.” Rotz, 143 A.D.2d at 305, 532 N.Y.S.2d at 248.

Plaintiffs introduce evidence that creates a question of fact as to foreseeability. Plaintiffs' security expert Henry Branche, a retired New York City Police Department Sergeant and former Chief of the Office of School Safety of the New York City Board of Education, who is now an independent security consultant, supports plaintiffs' contention that there was “bad blood” between the Bowe and Golota camps, that MSG was aware of this fact, and that MSG nevertheless “chose not to increase the number of security guards in attendance.” (Blanche Aff. at 2.) Also, as plaintiffs contend,

allowing people without credentials into the ring or the area next to the ring arguably made the riot foreseeable. Mr. Branche notes that MSG's own procedure was to limit access to people "who actually had something to do with the fight itself." (Blanche Aff. at 8.) According to Mr. Blanche, had MSG followed this procedure, the post fight riot could have been prevented or immediately brought to a halt before it could spread uncontrollably throughout the arena." (Blanche Aff. at 8.) This, too, creates a jury question.

Further, the circumstances surrounding the outbreak of violence in Rotz are similar to the situation inside of Madison Square Garden the night of the fight. In Rotz, the plaintiff was trampled during a stampede at a free Diana Ross concert in Central Park where the people were "jammed in like sardines." Rotz, 143 A.D.2d at 302, 532 N.Y.S.2d at 246. The claim was in part that defendant failed to provide for the safety and well-being of those persons lawfully present by not properly and adequately supervising a large crowd. The court found that this was a question of fact for the jury.

In light of common contemporary experience a jury could certainly find that, in the absence of adequate supervision and control of that crowd, it was reasonably foreseeable that disorder, unruliness, a melee or a riot could erupt from some cause ignited by the vagaries of myriad individuals "jammed together" in a heightened atmosphere. Id. at 305, 532 N.Y.S.2d at 248.

As in Rotz, a "heightened atmosphere" can be found to exist especially in this case where "the whole function is predicated upon violence." (Palma Dep. at 154.) As stated above, the bad blood between the boxers' camps and MSG's decision to admit

people without credentials to the ringside area can be found to have exacerbated an already hostile environment.

Because plaintiffs raise a genuine issue of fact with regard to foreseeability, an inquiry into the reasonableness of MSG's security to prevent the onset of the riot is not precluded by Napolitano v. Madison Square Garden Center, Inc., 195 Misc.2d 659, 660, 760 N.Y.S.2d 807, 808 (1st Dept 2003). Napolitano involved a hockey fan at Madison Square Garden who was injured during an unforeseeable altercation with another spectator while 80 security guards were on duty. The First Department's finding that 80 security guards are reasonable cannot be applied here because the riot and subsequent assault on Mr. Iacono may have been foreseeable.

Following directly from the first claim is plaintiffs' second claim that MSG was negligent in its failure to control the riot leading to the assault on Mr. Iacono. Having established that the riot may have been foreseeable, MSG may have also been negligent in not stopping or controlling the riot. In fact, plaintiffs contend that because the riot went on for an extended period of time, the injury to Mr. Iacono became increasingly foreseeable. Again, Rotz is applicable. Because MSG security was unable to control this riot:

A jury here could reasonably find that the risk of a riot or stampede could have been averted, or its consequences contained, by adequate crowd-control measures which would have inhibited or prevented the eruption of precipitating incidents such as individual or group altercations, arguments or other provocative causes that defendant city failed to exercise reasonable care necessary under the circumstances to avoid the

foreseeable risk. Id. at 305, 532 N.Y.S.2d at 248.

Further, in determining whether MSG was negligent in controlling the riot, the applicable standard is that the landowner is only required to take reasonable measures to secure the premises. See Florman v. City of New York, 293 A.D.2d 120, 124, 741 N.Y.S.2d 233, 237 (1st Dept 2002); Urena v. Guild, 213 A.D.2d 312, 312, 624 N.Y.S.2d 401, 402 (1st Dept 1995); Leyva v. Riverbay Corp., 206 A.D.2d 150, 155, 620 N.Y.S.2d 333, 336-37 (1st Dept 1994). The plaintiffs introduce evidence that the measures taken were not reasonable in responding to and in diffusing the riot. In his affidavit, Mr. Blanche asserts that MSG security engaged the rioters. But, he concludes that MSG's response techniques were unreasonable, stating, for example, that the "taking on of the rioters on a one to one basis was a losing proposition for Madison Square Garden security personnel who had then lost control of the crowd." (Blanche Aff. at 9). Therefore, plaintiffs' have set forth a question of fact on their second claim based on MSG's alleged negligence in controlling the riot.

The defendant also moves for summary judgment based on contributory negligence. However, contributory negligence or assumption of risk cannot bar recovery as a matter of law under CPLR §1411. See Turcotte v. Fell, 68 N.Y.2d 432, 438, 510 N.Y.S.2d 49, 53 (1986).

CONCLUSION

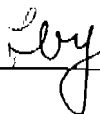
Plaintiffs have presented a material issue of fact with regard to foreseeability. Therefore, a further inquiry into the adequacy and/or reasonableness of MSG's security in preventing the onset of the riot and the related question of the reasonableness of

MSG security's response to the riot is warranted. Plaintiffs have demonstrated that material issues of fact exist as to the these claims. Accordingly, it is

ORDERED that the motion is denied.

Dated: 7/11/05

ENTER:



LOUIS B. YORK, J.S.C.

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JUL 21 2005
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