

Christian Wolff v. Cliffs Resort, LLC, 16CV-0380

Hearing: Defendants' Motion for Summary Judgment, Motion for Sanctions

Date: December 7, 2017

Plaintiff Christian Wolff ("Wolff") filed this action for negligence against the Cliffs Resort, LLC, individually and dba Marisol at the Cliffs, Boutique Hotel Collection, Inc., Cameron Baker (collectively the "Cliffs"), Raul Quintana-Castillo ("Quintana-Castillo"), and Timothy Arguijo. Wolff's complaint alleges one cause of action against the Cliffs for negligence for personal injuries allegedly suffered when Wolff was struck by a car driven by Defendant Quintana-Castillo while on property owned, controlled, and operated by the Cliffs resort. The Cliffs now moves for summary judgment on the grounds that Plaintiff's claim against the Cliffs is barred under Business and Professions Code section 25602(b) ("Motion"). The Cliffs further moves for sanctions against Wolff and his counsel, jointly and severally, under Code of Civil Procedure section 128.5 ("Motion for Sanctions").

The Cliffs as the moving party on the Motion has the initial burden to make a prima facie showing that there are no triable issues of material fact and that they are entitled to a judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) If the Cliffs makes a prima facie showing, then the burden shifts to Wolff to produce admissible evidence showing a triable issue of material fact exists. (Code Civ. Proc. §437c(p)(2).) A defendant moving for summary adjudication must "show" that there is a complete defense to a cause of action or that one or more elements of a cause of action cannot be established. (Code Civ. Proc. §437c(p)(2).)

Wolff alleges that he sustained injuries when he was struck by a car driven by Defendant Quintana-Castillo while Plaintiff was in the Cliffs' parking lot. Wolff's allegations include that Quintana-Castillo had been drinking at the Cliffs' restaurant, that he was obviously intoxicated at the time of the incident, and that the Cliffs' valet had returned his vehicle to him despite being obviously intoxicated. Wolff and Quintana-Castillo allegedly had an altercation prior to Wolff being struck by Quintana-Castillo's vehicle.

The Cliffs argues that Wolff pleads no grounds for liability other than allegedly allowing an intoxicated patron to drive, for which the Cliffs have immunity under Business and Professions Code section 25602(b). The statute provides that no person is liable for injuries caused by an intoxicated person as a result of the sale or furnishing of alcohol to that person. In enacting the statute, the legislature created a broad immunity, placing "sole and exclusive liability upon the consumer of alcoholic beverages." (*Cory v. Shierloh* (1981) 29 Cal.3d 430, 436-440.) The Cliffs analogizes the situation here to that in *Knighen v. Sam's Valet* (1988) 206 Cal.App.3d 69, wherein valets at a restaurant

returned a woman's car and keys despite being aware she was intoxicated. The woman proceeded to drive his car into the plaintiffs, who were standing nearby. (*Knighten v. Sam's Valet* (1988) 206 Cal.App.3d 69, 72.) In that case, the court held that there is no duty on the part of a restaurant or valet service to withhold automobiles from intoxicated patrons. (*Id.* at 73.) The Cliffs argues that as in *Knighten*, they had no duty to withhold Quintana-Castillo's vehicle, and that they are immune from liability under section 25602(b). They further argue that the Cliffs' valet took the most reasonable course of action available in trying to get Quintana-Castillo off of the property. The Cliffs sets forth 25 undisputed material facts ("UMF") to support its argument.

In response, Wolff argues that his negligence claim is not based upon the selling and/or furnishing of alcohol to Quintana-Castillo, and that therefore section 25602(b) does not apply. Wolff argues that his claim is a premises liability claim by an invitee who was injured while he was on the Cliffs' private property. It is undisputed that the alleged incident occurred in the Cliffs' parking lot. [Plaintiff's Additional Material Fact No. 2.] Wolff argues here that he had a special relationship with the Cliffs as an invitee, and that the Cliffs therefore owed him a duty. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 241 [restaurants owe a duty of due care to a patron or invitee].)

Wolff easily distinguishes *Knighten*. As stated, *supra*, that court only held that a restaurant or valet service has no duty to withhold automobiles from intoxicated patrons absent a special relationship. (*Knighten v. Sam's Valet, supra*, 206 Cal.App.3d at p. 73-74.) In *Knighten*, however, the plaintiffs were not injured on the defendants' property, and therefore no special relationship existed. Section 25602(b) does not remove the liability, arising from the special relationship between the proprietor and a guest or customer, to protect the guest from an unreasonable risk of harm. (*Cantwell v. Peppermill, Inc.* (1994) 25 Cal.App.4th 1797 ["An innkeeper must take reasonable steps to protect his guests from drunken assailants as well as sober ones"]; *Saatzer v. Smith* (1981) 122 Cal.App.3d 512, 518 [tavern keeper has a duty to protect a patron from injury by another where he has been warned of danger from an obstreperous patron and failed to take suitable measures for the protection of others; *see also* *Miller & Starr* (2017) 6 Cal. Real Est. §19:63.]

Wolff's Complaint alleges a claim for negligence against the Cliffs beyond the sale or furnishing of alcohol to Quintana-Castillo. Wolff disputes the Cliffs' Undisputed Material Fact No. 9, namely the claim that Quintana-Castillo did not appear intoxicated. Wolff's dispute is supported by not only his own testimony, but the police reports at the time of the incident. He also cites testimony of Quintana-Castillo that he had been drinking alcohol prior to the alleged incident. Wolff has met his burden of showing that triable issues of material facts exist. Specifically, issues such as foreseeability and whether the employees and agents of the Cliffs acted reasonably are questions for the trier of fact and not properly decided as a matter of law.

The Cliffs' Motion for Summary Judgment is denied. The Cliffs' and Wolff's evidentiary objections cannot be ruled upon as they are not properly formatted pursuant to CRC 3.1354.

The Cliffs also moves for sanctions under Code of Civil Procedure section 128.5 on the basis that Wolff's claim against the Cliffs is clearly frivolous. The Cliffs' motion is denied.