SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 31

22STCV06905
DEVANTE CALDWELL, et al. vs LIVE NATION WORLDWIDE, INC., et al.

January 11, 2023
8:30 AM

Judge: Honorable Yolanda Orozco
Judicial Assistant: M. Ventura
Courtroom Assistant: T. De La Paz

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Demurrer - with Motion to Strike (CCP 430.10) By Defendants, Live Nation Worldwide, Inc. and C3 Presents, LLC To Plaintiffs' First Amended Complaint

The above matter is not called as Counsel have submitted to the Court's tentative ruling via email.

The Court's tentative ruling is adopted as the final order as follows:

Defendant's demurrer is OVERRULED.

Defendant's Motion to Strike is GRANTED WITH LEAVE TO AMEND.

BACKGROUND

On February 24, 2022, Devante Caldwell; Calvin Webb; Terrence Hackett; Kevin Gomez; Jorky Peralta; Felton Binns; Jerome Watkins; and Alrick Cooper, III (collectively "Plaintiffs") filed a Complaint against Live Nation Worldwide, Inc; C3 Presents, LLC; Bobby Dee Presents, Inc; Snoop Dogg's LLC; LAFAC Sports, LLC; Contemporary Services Corporation; and Does 1 to 20.

The operative First Amended Complaint (FAC) asserts causes of action for:

1) Negligence;

2) Negligence – Premises Liability;

3) Negligent Infliction of Emotional Distress (NIED); and

4) Intentional Infliction of Emotional Distress (IIED).

On July 18, 2022, Defendants Live Nation Worldwide, Inc. ("Live Nation") and C3 Presents, LLC ("C3") filed a demurrer and a motion to strike the Plaintiffs' FAC.

Plaintiffs filed opposing papers on November 28, 2022. Defendants submitted a reply on December 07, 2022.

MEET AND CONFER

Before filing a demurrer or motion to strike, the moving party must meet and confer in person or by telephone with the party who filed the pleading to attempt to reach an agreement that would resolve the objections to the pleading. (Code Civ. Proc., §§ 430.41, 435.5.) "Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (Code Civ. Proc., § 430.41, subd. (a)(4).)

The meet and confer requirement has been met. (Pompeo Decl. ¶¶ 3-6, Ex. A-C.)

LEGAL STANDARD

A. Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (C.A. v. William S. Hart Union High School Dist. (2012) 53 Cal.4th 861, 872.) For the purpose of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts properly pleaded. (Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) A demurrer "does not admit contentions, deductions or conclusions of fact or law." (Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 713.)

B. Motion to Strike

Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. (Code of Civ. Proc., § 435(b)(1); Cal. Rules of Court (CRC), Rule 3.1322(b).) The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code of Civ. Proc., § 436, subds. (a)-(b); Stafford v. Shultz (1954) 42 Cal.2d 767, 782 ["Matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded"].)

C. Leave to Amend

"Where the defect raised by a motion to strike or by demurrer is reasonably capable of cure, leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question." (CLD Construction, Inc. v. City of San Ramon (2004) 120 Cal.App.4th 1141, 1146.) The burden is on the complainant to show the Court that a pleading can be amended successfully. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 348.)

DISCUSSION

Allegations in FAC

This case arises out of the death of Darrell Caldwell (the decedent), known by his stage name of Drakeo the Ruler, at the Once Upon a Time in Los Angeles music festival (the "Music Festival"). The Music Festival took place on December 18, 2021, at the Bank of California Stadium in Exposition Park, Los Angeles. (FAC Intro.)

Live Nation, along with the other named Defendants, was responsible for organizing, promoting, selecting, and hiring artists and security personnel. (FAC ¶ 9.) The FAC alleges that Live Nation and C3 had a duty to implement and execute a security plan to safeguard, detect and prevent violent incidents from taking place at the Music Festival. (Id., ¶ 11) Live Nation also had the

exclusive lease agreement to operate, manage, control, and supervise the Bank of California Stadium during the Music Festival. (Id. ¶ 9.)

The FAC further alleges that Defendants knew or should have known that many of the artists performing were associates of or affiliated with Los Angeles street gangs. (FAC ¶ 22.) Specifically, the location of the Music Festival is in an area known colloquially as "South Central" and that the area is rife with gang activity and boasts one of the highest rates of violent crime in the city, including, but not limited to assault, robbery, attempted murder, and murder. (Id.) The decedent faced threats and constant hostility from gang members and others that stemmed from his exoneration of an attempted murder charge from an alleged Blood gang member. (Id. ¶ 23.)

The FAC alleges that attendees via social media and news media alleged they were met with chaos from the onset, with some attendees entering without being searched, passing through any metal detector, or submitting to any COVID-19 verification procedure. (FAC ¶ 25.)

The performing artists were instructed to enter through a driveway, where they passed through two “checkpoints”: “the first was simply a booth containing one or two unarmed personnel members who let through any vehicle that presented an “all-access” pass without searching it or verifying the identities of the occupants of the vehicle or even whether the number of passes matched the identity or number of occupants.” (FAC ¶ 26) The second checkpoint had a small group of security guards who had a drug-sniffing dog and a metal detector. (Id.) On information and belief, the Plaintiffs allege that the requirement to submit to metal detector searches or a dog search was imposed arbitrarily and flippantly, with some cars only being cursorily searched while others were not even searched. (Id. ¶¶ 26, 27) “Of the two cars in which Plaintiffs arrived, PLAINTIFF ALRICK COOPER III was the only person that was ordered out of the car and cursorily frisked. No other Plaintiff was searched, nor was either vehicle.” (Id. ¶ 26.)

Plaintiffs further allege that they observed one united caravan of approximately 10 cars filled with occupants drive past the second checkpoint without being stopped or searched while shouting gang-related challenges and other verbiage such as “Whoooop” to the Plaintiffs. (FAC ¶ 27.) Past the second checkpoint, was the “all-access VIP” area, where the artists were to park and where their trailers were located. (Id. ¶ 28.) There were no security guards, event staff members, or law enforcement officers present in this area. (Id.) There were also no cameras or other deterrents to unlawful activity or violence. (Id.) The decedent arrived in the “all-access” area at approximately 8:30 p.m. and was scheduled to perform at 8:50 p.m. (Id. ¶ 29.) Within minutes of his arrival, he and his entourage were attacked. (Id. ¶ 30.) A fight ensued, and no security

intervened or were present when Plaintiffs Gomez and Peralta were attacked or when the larger fight broke out. (FAC ¶ 30.) The fight initially involved about 20 people but grew to about 50 to 100 individuals. (FAC ¶¶ 31, 32.)

The mob who attacked the Plaintiffs wore all red and shouted battle cries of "Whooop!" and "Suuu Whoooop" which were heard from the cars that entered the "all-access VIP" area without being searched. (FAC ¶ 32.) The fight became more vicious, as captured on video footage, and security never materialized to intervene. (Id.) Some Plaintiffs sought refuge through the one gate that separated the VIP area from the stage but were blocked and pushed back from reaching safety. (Id. ¶ 33.) Plaintiffs allege that video footage shows that Plaintiffs were punched, kicked, and stomped on while on the ground by a mob that outnumbered Plaintiffs and with no intervention from security. (Id.) Members of the mob produced knives and lunged at the decedent and the Plaintiffs. (Id.) The decedent was stabbed in the neck and his brother, Plaintiff Devante Caldwell, witnessed the fatal knife wound and saw his brother suffer blood loss. (Id. ¶ 34.) The mob eventually dispersed. (Id.) Since the mob was not searched, and no security stopped them, their identities were never verified, and the attackers disappeared into anonymity. (Id. ¶ 35.)

Plaintiffs saw the decedent lose consciousness. (FAC ¶ 35.) Due to the chaos and lack of safety measures, it took 30 minutes for emergency personnel to reach the decedent. (Id.) The decedent was transported to the hospital and declared dead at 3:00 a.m. on December 19, 2021, with his brother Devante by his side. (Id. ¶ 36.)

I.Demurrer

The Defendants demurrer to Plaintiffs' FAC on the basis that it fails to state sufficient facts to constitute a cause of action against Defendants. (See Code of Civ. Proc., § 430.10 subd. (e).)

1st and 2nd C of A: Negligence and Premises Liability

Both negligence and premises liability causes of action have the same elements. "The elements of a cause of action for negligence are well established. They are (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." (Ladd v. County of San Mateo (1996) 12 Cal.4th 913, 917 [internal quotations omitted].)

Defendants assert that Plaintiffs' negligence causes of action fail because Plaintiffs have failed to allege evidence of prior or similar incidents, to show that harm to Plaintiffs was foreseeable.

"It is clear that foreseeability is but one factor to be weighed in determining whether a landowner owes a duty in a particular case." (Isaacs v. Huntington Memorial Hospital (1985) 38 Cal.3d 112, 125.) "Prior similar incidents are helpful to determine foreseeability, but they are not necessary. A rule that limits evidence of foreseeability to prior similar incidents deprives the jury of its role in determining that question." (Id. at 127.) "We further explained that foreseeability should be assessed in light of the 'totality of the circumstances,' including such factors as the nature, condition and location of the premises." (Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal.4th 666, disapproved of on another grounds by Reid v. Google, Inc. (2010) 50 Cal.4th 512.) In Ann M., the California Supreme Court affirmed summary judgment in favor of the owner because the plaintiff had failed to provide any evidence that the defendant shopping center had notice of prior incidents of violent criminal assaults and therefore had no duty to provide security guards in common areas. (Id. at 679.)

Plaintiffs assert that Defendant's reliance on Ann M. is unavailing because the case was decided at the summary judgment stage, and not on demurrer, meaning that Ann M.'s pleading was not insufficient. On demurrer, Plaintiffs need not prove that prior or similar incidents have occurred on the premises of the Music Festival. "Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer." (Stevens v. Superior Court (1986) 180 Cal.App.3d 605, 609–610.) Moreover, at issue is the failure to provide any security in the "all access VIP" area rather than in a common area.

While the determination of a duty is a question of law, "a mixed question of law and fact may arise out of the relationship of foreseeability to the creation of a duty." (Musgrove v. Ambrose Properties (1978) 87 Cal.App.3d 44, 52.) Here, the FAC sufficiently alleges that security was lax at the second checkpoint and that despite the presence of security guards and metal detectors, some vehicles were not adequately searched or not searched at all, thus allowing the assailants to enter the "all-access VIP" area. (FAC ¶ 27.) "The weight of authority in other jurisdictions, however, indicates that under analogous circumstances, a landlord is liable even for the first crime of a particular type." (Kwaitkowski v. Superior Trading Co. (1981) 123 Cal.App.3d 324, 329.) Although the occurrence of a mob/gang attack may have occurred for the first time, Defendants may nevertheless be held liable if the facts show that the danger was foreseeable and/or preventable.

The California Supreme Court has explained:

"Thus, as to foreseeability, we have explained that the court's task in determining duty 'is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed....' (Citation.)"

(Cabral v. Ralphs Grocery Co. (2011) 51 Cal.4th 764, 772 [italics original].)

The fact that Defendants knew security would be needed for the event, supports the finding that the performing artists' safety was a concern for Defendants and foreseeable to Defendants. The fact that not all vehicles were searched or that the searches were inadequate and the fact that no security was present in the "all-access VIP" area are alleged to be negligent acts that were sufficiently likely to result in the kind of harm the Plaintiffs suffered.

Plaintiffs also point out that even if the mob/gang attack was not foreseeable, Defendants owed an affirmative duty to act and stop the attack once the attack began, yet no one intervened to stop the attack. (FAC ¶¶ 30, 33, 47.) "Premises liability is grounded in the possession of the premises and the attendant right to control and manage the premises; accordingly, mere possession with its attendant right to control conditions on the premises is a sufficient basis for the imposition of an affirmative duty to act." (Kesner v. Superior Court (2016) 1 Cal.5th 1132, 1158 [internal quotations and citations omitted].) Plaintiffs have sufficiently alleged that Defendants breached a duty in failing to act in stopping the mob/gang attack once it began.

Accordingly, the demurrer is OVERRULED as two the first and second causes of action.

3rd C of A: Negligent Infliction of Emotional Distress (NIED)

California courts have repeatedly recognized that NIED is not an independent tort, but the tort of negligence such that the traditional elements of duty, breach of duty, causation, and damages apply. (See, e.g., Spates v. Dameron Hospital Association (2003) 114 Cal.App.4th 208, 213; Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc. (1989) 48 Cal.3d 583, 588.) Emotional distress damages are generally not authorized in cases other than that of physical injury. (Branch v. Homefed Bank (1992) 6 Cal.App.4th 793, 800.) "Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." (Id., citing Rest.2d Contracts,

§ 353.)

The third cause of action for NIED is asserted by Plaintiff Devante Caldwell the brother of decedent Darrel Caldwell. (FAC ¶¶ 1, 34.) Plaintiff Devante alleges that Defendants owed a duty not to cause him emotional distress and that Defendants knew Devante would suffer extreme emotional distress if Defendants failed to prevent harm from occurring to Devante and to the decedent in Devante's presence. (Id. ¶ 54.) Defendants breached this duty by failing to provide adequate security and/or failing to implement and enforce adequate security protocol when the dangers of such failures were known given the location of the Music Festival and the scale of the event. (Id. ¶¶ 55, 56.) But for Defendant's failure, Devante would not have been subject to a massive group assault, would not have had to fight for his life, and would not have witnessed his brother, the decedent being beaten and stabbed. (Id. 57.) Plaintiff Devante tried to save his brother's life by attempting to suppress rushing blood, saw his brother lose consciousness, and ultimately witnessed his brother die. (Id.) Consequently, Plaintiff Devante suffered extreme emotional distress, mental damages, stress, anxiety, and other psychological harm that will likely last throughout his life. (Id. ¶ 58.)

Defendants argue that Plaintiff Caldwell has failed to state sufficient facts to constitute a cause of action for NIED against Defendants because he did not suffer "severe" emotional distress.

Plaintiff Devante has alleged that he was physically injured. (FAC ¶ 35.) Therefore, he can sustain an NIED claim both as a direct victim and a bystander. (See Spates v. Dameron Hospital Association (2003) 114 Cal.App.4th 208, 213.) "The range of mental or emotional injury subsumed within the rubric 'emotional distress' and for which damages are presently recoverable 'includes fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain.' (Citation.)" (Thing v. La Chusa (1989) 48 Cal.3d 644, 648–649.) This is exactly what Plaintiff Devante has plead in the FAC. (FAC ¶ 58.)

"Our State Supreme Court has made clear that 'to recover damages for emotional distress on a claim of negligence where there is no accompanying personal, physical injury, the plaintiff must show that the emotional distress was 'serious.' (Citation)" (Belen v. Ryan Seacrest Productions, LLC (2021) 65 Cal.App.5th 1145, 1166.) Since, Plaintiff Devante has pled sufficient facts that he was personally injured by Defendant's negligent conduct, Devante need not plead that he suffered emotional distress as a direct victim. (FAC ¶ 58.)

Since there is no independent tort for NIED, the Court construes the NIED cause of action as subsumed under the negligence cause of action (1st claim) and finds that Plaintiff Devante has

plead sufficient facts to sustain a cause of action for negligence and a claim for emotional distress damages.

4th C of A: Intentional Infliction of Emotional Distress (IIED)

The elements of the tort of intentional infliction of emotional distress are set forth in the California Supreme Court case of Christensen v. Superior Court (1991) 54 Cal.3d 868, 903, as follows: "'(1) Extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct...The defendant must have engaged in 'conduct intended to inflict injury or engaged in with the realization that injury will result.'" (Id.) Whether Defendant's conduct was outrageous, oppressive or malicious is a question of fact for the jury. (Alcorn v. Anbro Engineering. Inc. (1970) 2 Cal.3d 493, 499.)

The FAC alleges that each Defendant engaged in extreme, outrageous, unlawful, and unprivileged conduct, including, but not limited to:

(a) Soliciting services of artists and patronage of fans known to be raucous and likely to engage in dangerous behavior;

(b) with knowledge of the nature of the event, its locale, and its patronage, failed to implement security protocols sufficient to prevent violence to the artists, members of their entourage, and concertgoers.

(c) knowingly prevented Plaintiffs from providing their own security despite knowledge about the dangerous conditions and absence of adequate security;

(d) failing to take reasonable steps to prevent weapons from entering the venue;

(e) failing to intervene during the attack on Plaintiffs;

(f) physically preventing Plaintiffs from reaching a place of safety during the attack by blocking the only means of escape and corralling Plaintiffs in the space where the attack was ongoing; and

(g) failing to have medical personnel present to administer aid to the harmed individuals.

(FAC ¶ 61.)

The FAC further alleges that Defendants intended to cause harm to Plaintiff when they acted with a reckless disregard of the substantial likelihood that Plaintiffs would suffer extreme emotional distress. (FAC ¶ 62.) Consequently, the Plaintiffs suffered extreme emotional and physical distress, " including, but not limited to terror, nervousness, sleeplessness, anxiety, worry, mortification, shock, humiliation, indignity, physical manifestations of emotional distress, loss of self-esteem, fear for their safety, disgrace, and loss of enjoyment of life; were prevented and will continue to be prevented from obtaining the full enjoyment of life; and have sustained and will continue to sustain a loss of reputation." (Id. ¶ 63.)

Defendants demurrer on the basis that Plaintiffs failed to plead that Defendants intentionally allowed people in without being searched. However, Plaintiffs have sufficiently alleged that Defendants acted with reckless disregard for the probability of causing emotional distress by virtue of failing to provide adequate security; failing to intervene during the attack and preventing Plaintiffs from reaching a place of safety. (FAC ¶ 60.)

For conduct to be "outrageous," it must be so extreme as to exceed all bounds of that usually tolerated in a civilized society. (Hughes v. Pair (2009) 46 Cal.4th 1035, 1050-1051.) The Defendant must either intend his or her conduct to inflict injury or engaged in it with the realization that injury will result. (Id.) Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. (Id.) Here, the fact that the Defendants did not intervene and prevented the Plaintiffs from reaching a place of safety is sufficient to support a finding of outrageous conduct.

Accordingly, the demurrer is OVERRULED as to the fourth cause of action.

II. Motion to Strike

Defendants seek to strike punitive damages from Plaintiffs' FAC on the basis that Plaintiffs have failed to show that Defendants acted with "malice, oppression, or fraud."

Specifically, Defendants seek to strike the following:

1) Page 19, paragraph 52, lines 14 to 18:

"DEFENDANTS acted knowingly and willfully, with reckless disregard for the substantial risk and severe harm Plaintiffs. Therefore, Plaintiff is entitled to an award of punitive damages against the DEFENDANTS in order to punish those defendants and to deter them and others from such conduct in the future."
2) Page 22, paragraph 64, line 20:

"with malice and oppression, and/or with reckless disregard."
3) Page 22, paragraph 64, lines 23 to 24:

"Therefore, PLAINTIFFS are entitled to an award of punitive damages for the purpose of punishing DEFENDANTS, and to deter them and others from such conduct in the future."
4) Page 23, Prayer for Relief, paragraph 3, lines 7 to 8:

"As against only the individual defendants and not any municipality, punitive damages as allowed by law."
To state a claim for punitive damages under Civil Code section 3294, a plaintiff must allege specific facts showing that the defendant has been guilty of malice, oppression, or fraud. (Smith v. Superior Court (1992) 10 Cal. App. 4th 1033, 1042.) The basis for punitive damages must be pled with specificity; conclusory allegations devoid of any factual assertions are insufficient. (Id.)

For a corporate defendant, section 3294, subdivision (b), requires that the plaintiff show that a managing agent, officer, or director of the corporation authorized or ratified the wrongful conduct for which punitive damages are sought. (Code Civ. Proc., § 3294, subd. (b); White v. Ultamar (1999) 21 Cal.4th 563, 572.) An individual must be in a corporate policymaking position in order to be considered a managing agent for the purposes of imposing punitive damages liability on the corporation. (Myers v. Trendwest Resorts, Inc. (2007) 148 Cal.App.4th 1403, 1437.) A "managing agent" includes "only those corporate employees who exercise substantial independent authority and judgment in their corporate decision-making so that their decisions ultimately determine corporate policy." (White, supra, 21 Cal. 4th at p. 566.) While "supervisors who have broad discretionary powers and exercise substantial discretionary authority in the corporation could be managing agents," those "supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees." (Id.)

Plaintiffs fail to name individual defendants or identify who the managing agents, officers, or

directors are who ratified the wrongful conduct. Although DOE defendants, are named, no facts are given to show that the DOE defendants are managing agents of Defendants or how the DOE defendants ratified the wrongful conduct of the corporate Defendants.

Accordingly, the Motion to Strike punitives is GRANTED WITH LEAVE TO AMEND.

CONCLUSION

Defendant's demurrer is OVERRULED.

Defendant's Motion to Strike punitives is GRANTED WITH LEAVE TO AMEND.

Moving party to give notice.