IN THE COURT OF APPEALS OF GEORGIA

Case No. A23A1449

LYNDA SOUNDARA,

Appellant,

v.

AMB SPORTS & ENTERTAINMENT, LLC, AND ATLANTA FALCONS STADIUM COMPANY, LLC,

Appellees.

BRIEF OF APPELLEES AMB SPORTS & ENTERTAINMENT, LLC, AND ATLANTA FALCONS STADIUM COMPANY, LLC

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I. INTRODUCTION

This appeal arises out of a premises liability lawsuit filed by a woman who voluntarily entered into ongoing physical altercations. Plaintiff/Appellant Lynda Soundara ("Plaintiff" or "Appellant") attempts to shift the liability of her admitted violent, voluntary, and negligent actions on Defendant/Appellee Atlanta Falcons Stadium Company, LLC ("StadCo") and its uninvolved parent company AMB Sports & Entertainment, LLC ("AMBSE," and together with StadCo, "Stadium Appellees").

Video cameras captured the events giving rise to the underlying litigation.[1] While Appellant's Brief omits Appellant's violent conduct and misstates the record evidence, footage from cameras located in Mercedes-Benz Stadium ("MBS") shows every relevant detail of Appellant's knowledge, and more importantly, her *actions*. The footage shows Appellant: (i) *observing* Mr. Kraver, Jr. and Mr. Kraver, III (collectively, "the Kravers") as they had a heated discussion with security staff; (ii)

[1] The relevant videos were entered into the record of the Court and is included on the State Court's Index as "Def Exhibit 9." The exhibit contains two videos: StadCo_00001 and StadCo_00002. The videos will be cited herein as "V1:22 – Def Exhibit 9 – StadCo_00001 or StadCo_00002 – [TIMESTAMP]"

following the Kravers and security staff into a vomitory at MBS; (iii) *observing* a heated verbal-then-physical altercation between her then-fiancé, Peter Hill ("Hill") and the Kravers; (iv) *moving* from a position of safety to *approach* Hill and the Kravers as they engaged in the heated verbal-then-physical altercation; (v) *physically engaging* the hostile group by pushing into the crowd; (vi) *observing*[2] Hill and the Kravers engage in a violent physical altercation several feet away; (vii) *arming* herself with her shoe to attack Kraver III in defense of Hill; (viii) *running* several feet to the fight between Hill and Kraver III; (ix) *swinging* her shoe in Kraver III's direction; (x) *hitting* Kraver III over the head with her shoe; and finally (xi) being thrown away from the altercation by Kraver, Jr. in protection of his son, Kraver III.

Georgia law is clear that a party who voluntarily enters into a violent fight has knowledge of its hazards superior to knowledge of the premises owner, as "[s]he and the other combating party, 'by their voluntary participation, have selected the time, date, and place for the altercation.'" *Porter v. Urban Residential Development Corp.*, 294 Ga.

[2] Appellant testified that she saw Hill "getting choked and attacked by two people."

App. 828 (2008). Despite this well-known law and Georgia courts' consistent position that "an active participant in a brawl cannot sue the premises owner for injuries from the brawl,"[3] Plaintiff/Appellant brought the underlying action.

Recognizing Appellants' untenable positions, after substantial summary judgment briefing, a hearing, and giving the parties the opportunity to file supplemental briefing, the State Court of Gwinnett County properly granted summary judgment for the Stadium Defendants.

This Court should affirm the judgment below.

PART ONE

II. STATEMENT OF THE CASE

A. Response to Appellant's Statement of Facts

Appellant's statement of "Facts" misrepresents the evidence of record. For example, Appellant states that AMBSE and StadCo share services and departments to provide safety and security at MBS. *See* Appellant's Brief at 3. However, the record shows that StadCo is only a subsidiary "under the umbrella of AMBSE." (V12:278-282.)

[3] *Id.*

Next, Appellant cites to a SAFE employee training PowerPoint presentation and to SAFE's deposition testimony to support Appellant's statement that "StadCo and SAFE Management knew that their employees would encounter violent conduct among fans…" *See* Appellant's Brief at 6. Nothing in the cited references supports Appellant's contention that StadCo or SAFE had any knowledge that their employees would encounter violent conduct. In fact, there is no reference to violence at all in the cites provided by Appellant. Even for the sake of argument, if violence was referenced, SAFE's knowledge or expectation of violence does not show StadCo's knowledge or expectation of violence.

Appellant also contends that several StadCo employees observed the Kravers act violently during an altercation in the seating bowl and in the concourse. *See* Appellant's Brief at 8-9. Appellant, however, has failed to point to any evidence of what the relevant StadCo employees actually observed. In fact, as stated by Joe Coomer, StadCo's vice president of security, StadCo could not attest to what StadCo employees saw or witnessed. (V12:307.) And to the extent StadCo employees witnessed any violent conduct by the Kravers, Appellant has pointed to

no factual support that any StadCo employee knew if the Kravers were victims or aggressors in the seating bowl. (V12:300.)

Appellant ignores the real-time circumstances associated with responding to a physical altercation. Instead, Appellant insists that StadCo and SAFE should have immediately ejected the Kravers or violated their constitutional rights by placing them under arrest and in a holding cell prior to investigating the cause of the altercation and whether the Kravers were acting in self-defense.

Appellants claim that the Kravers were allowed to walk back into the seating bowl. *See* Appellant's Brief at 10. This is contrary to the record evidence. The Kravers were never allowed back into the seating bowl and never went back into the seating bowl. Rather, they were allowed into the tunnel which led to the seating bowl for the sole purpose of identifying the other individuals involved in the physical altercation. (V5:907, 969, 1013, 1039, 1045, 1051.) Prior to reaching the end of the tunnel, the Kravers were met by Hill, who initiated an argument with the Kravers and then pushed Kraver III. (V2:273; V5:899, 909, 914-15, 964, 974-75, 1028, 1046, 1053, 1117-19, 1129, 1180, 1195-96.)

While Appellant's brief omits her actions and attempts to frame Appellant as a confused passive bystander, the record evidence shows that Appellant violently and voluntarily physically engaged with the Kravers not once, but twice. (V2:273; V5:887, 909, 916-17, 964, 974-75, 1020, 1030, 1048, 1181-82, 1195-96.)

A. Appellees' Substituted Statement of Material Facts Based on Record Evidence

Pursuant to Court of Appeals Rule 25(b), Stadium Appellees submit the following facts and citations to the record in full substitution for Appellant's statement of "Facts."

1. Background

Appellant attended a college football game at MBS, got drunk, witnessed an altercation, joined in that altercation, witnessed an even more physical altercation, and voluntarily joined in that physical altercation. V2:273; V5:887, 909, 916-17, 964, 974-75, 1016-18, 1020-21, 1030, 1181-82, 1195-96, 1198, 1200.)

As a result of Appellant's own voluntary acts, she sustained injuries. (V5:1011,1020.)

2. The Parties

StadCo operates MBS pursuant to a Stadium License and Management Agreement between StadCo and the owner of MBS. (V5:899.) In March of 2017, StadCo and S.A.F.E. Management of Georgia, LLC ("SAFE") entered into an Agreement for the Performance of Services (the "SAFE Agreement") whereby SAFE agreed to provide security services in and around MBS. (V5:976-1007.)

The SAFE Agreement was in full force and effect on September 2, 2017. (V2:178.) StadCo also contracts with off-duty POST-Certified law enforcement officers to provide security services at MBS. (V5:956.) StadCo also entered into a License Agreement for Publicly Ticketed Events with Peach Bowl, Inc. ("Peach Bowl")[4]. (V2:160.)

The Kravers are a father and son who visited Atlanta to attend the Chick-fil-A Peach Bowl game on September 2, 2017. (V5:1024.)

3. Mercedes-Benz Stadium & The 2017 Chick-fil-A Peach Bowl Kick-Off Game

On September 2, 2017, StadCo hosted the Chick-fil-A Peach Bowl Kick-Off game (the "Game") at the then-brand-new MBS. (V5:1011.) MBS

[4] Peach Bowl was dismissed on September 26, 2022. (V7:2307.)

had opened to the public only one week prior to the Game. (V5:959.) The Game was only the second football game hosted at MBS, but the first college football game ever hosted at MBS. (V5:1011.)

4. The Incident

While at the Game, Appellant drank several alcoholic beverages and got "drunk.[5]" (V5:1018, 1021.) During the fourth quarter of the Game, while waiting for Hill, Appellant stood in the concourse of MBS and observed the Kravers engaging in a heated conversation with SAFE and StadCo employees. (V1:22 – Def Exhibit 9 – StadCo_00002 [00:12 – 00:24]; V2:272-73; V5:913, 915-17, 974, 1031.)

The Kravers were speaking with SAFE and StadCo employees (collectively "security staff") about a verbal and physical altercation that took place in the Section 120 seating bowl a few minutes prior. (V5:906-6, 965, 970-71, 1010, 1029, 1036, 1044.) The security staff who were speaking to the Kravers had not witnessed the altercation in the seating bowl. (V5:904.) After receiving reports about the altercation in the seating bowl, security staff immediately responded and sought to defuse

[5] *See* V5:1198-1200 (Grady medical records indicating final diagnosis as "EtOH intoxication" and stating that blood alcohol level was .16).

the situation. (V2:179; V5:904-5, 965, 970-71, 1010, 1036.) In responding, security staff could not determine if the Kravers were aggressors, victims, or mere bystanders defending themselves. Therefore, security staff removed the Kravers, the smallest group[6], from the seating bowl to conduct an investigation of what took place in the seating bowl. (V5:905-6, 965-66.) The Kravers were escorted to the concourse and questioned by security staff. (V2:179; V5:904-5, 965, 970-71, 1010, 1036.) During questioning and still visibly upset, the Kravers notified security staff that FSU fans in the seating bowl had been aggressive towards them. (V5:1029, 1044.) Appellant stood and watched this conversation. (V1:22 – Def Exhibit 9 – StadCo_00002 [00:12 – 00:24]; V5:913, 916, 971-72, 1019, 1048.) SAFE and StadCo, following their policies, determined that all individuals involved in the fight should be ejected if the conduct complained of violated StadCo's Fan Code of Conduct as well as SAFE's

[6] The Kravers were Alabama fans and in an overwhelming minority of fans seated in Section 120 which mostly consisted of Florida State fans who became angry as Alabama gained a substantial lead over FSU in the second half of the game. (V5:1026.)

protocols, which are consistent[7]. (V5:903, 912, 914.) The most expedient way to identify the others involved in the altercation in the seating bowl was to allow the Kravers to identify them from a distance. (V5:907.) To do so, the security staff allowed the Kravers to point out the individuals from the *vomitory tunnel* leading to the seating bowl. (V5:907.) The Kravers and security staff walked from the concourse into the tunnel. (V1:22 – Def Exhibit 9 – StadCo_00002 [00:16 – 00:25]; V5:969, 1051.) SAFE employees stood between the vomitory and the seating bowl where the other involved individuals were believed to be. (V5:1013, 1039, 1045.) The Kravers were never allowed back into the seating bowl. (V5:969, 1051.) In walking toward the vomitory, the Kravers walked past Appellant. (V1:22 – Def Exhibit 9 – StadCo_00002 [00:16 – 00:26]; V2:272; V5:913, 916, 1048, 1194.) Appellant, by her own volition and having heard the Kravers' heated discussion with the security staff, followed the Kravers into the vomitory. (V1:22 – Def Exhibit 9 – StadCo_00002 [00:26 – 00:29]; V5:913, 915-17, 974, 1031-32, 1048.)

[7] Investigations are necessary because security staff, also considering fan experience, are not prone to eject fans who are victims of attacks or whose actions are solely in self-defense. (V5:904.)

As the Kravers and security staff approached the location in the tunnel where they would be able to identify the other involved individuals, they encountered Hill as he exited the bathroom located in the tunnel and approached the Kravers from behind. (V2:272-73; V5:1028, 1046.) Hill shouted expletives and physically engaged with the Kravers by pushing Kraver III. (V5:1046, 1053, 1117-19, 1180.) Appellant, from several feet away, witnessed Hill exit the restroom and shout expletives at the Kravers, then voluntarily approached the men and engaged in the altercation which had already started. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:38 – 00:43]; V5:909, 964, 974-75, 1048, 1195-96.) All of the other women who saw the altercation kept their distance, including Lillie Kraver, Kraver, Jr.'s wife. (V5:1195-96.) Instead of keeping her distance, Appellant voluntarily joined in the altercation by moving towards the altercation and pushing into the hostile group of men. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:38 – 00:43]; V5:909, 964, 974-75, 1048, 1195-96.) Kraver III then lunged at and took a swing at Hill. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:43 – 00:44]; V5:914, 1048.) After Appellant initially engaged in the physical altercation, she fell to the ground. (V1:22 – Def Exhibit 9 – StadCo_00001

[00:46 – 00:47]; V5:909, 964.) While Appellant was on the ground, the physical altercation moved from the tunnel to the concourse. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:48 – 00:50]; V5:913, 916, 964, 974, 1048.)

In the concourse, Hill aggressively taunted Kraver III using a "defensive move" by throwing his hat on the ground and backing up as to invite Kraver III to fight. (V5:914-15, 1048, 1129.) Hill and Kraver III became the main participants in the fight. (V5:1119, 1180.) As the ongoing physical altercation continued and shifted from the tunnel to the concourse, Appellant again followed the commotion between Hill and Kraver III. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:51-00:52]; V5: 902, 913, 916, 964, 974, 1048.)

Hill and Kraver III exchanged blows and became physically interlocked. (V5:917, 1028, 1048.) Appellant observed as Hill and Kraver III threw punches and were being physically aggressive toward each other. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:49 – 00:51]; V5: V5:1020; 1140-41, 1144.) Even before the altercation, Appellant saw the Kravers and observed that they were over six feet tall and the size of football players. (V5:1144.) Unprompted, Appellant then took off her shoe and ran several feet from a position of safety toward the fight. (V1:22

– Def Exhibit 9 – StadCo_00001 [00:47 – 00:51]; V2:273; V5:975, 1020, 1030, 1048, 1181-82.) When reaching the fight, she repeatedly struck Kraver III on his head with her shoe. (V1:22 – Def Exhibit 9 – StadCo_00001 [00:51 – 00:54]; V5:917, 964-65, 1020, 1048, 1181; V11:4165-66.) Shortly after her assault on Kraver III, to defend his son, Kraver, Jr. grabbed Appellant off Kraver III and threw her to the ground. (V5:1020, 1028, 1048.) The fight was eventually broken up and the Kravers were arrested. (V2:261.) To ensure her health, StadCo coordinated medical attention prior to Appellant being taken to the hospital. (V5:1011, 1020.)

The Kravers were arrested and Kraver, Jr. was charged with Simple Battery as related to Appellant. (V5:1202, 1204.) The Simple Battery charge was subsequently dismissed after July 3, 2019, when Kraver, Jr. was found immune from prosecution by the Fulton County Superior Court because his actions were in defense of his son and because "he was justified in his actions toward Ms. Soundara, which were grabbing her and throwing her away from the altercation…" (V2:163; V5:1206-8.)

5. StadCo's Training, Practices, and Policies

StadCo's Guest Services employees undergo a "Welcome Home Training" at the beginning of their employment at MBS. (V5:918-951, 956, 1012.) The training consists of briefing and materials related to safety and guest services. (V5:918-951.) The agreement between StadCo and SAFE also requires that SAFE and its employees undergo training and maintain up to date training materials and policies, including a mandatory 4-hour Mercedes-Benz Associate Training and specific contractor training in several specific areas, including, but not limited to procedures to respond and defuse potentially volatile crowd behavior. (V5:984-85.)

Further, when responding to verbal or physical altercations in MBS, StadCo and SAFE have consistent policies to conduct investigations to determine if involved parties should be ejected. (V5:915, 965.) StadCo's policy is not to automatically eject those involved in altercations before conducting an investigation to determine the at-fault party. (*Id.*) StadCo's actions and determinations are generally based on StadCo's Fan Code of Conduct, which also constitutes baseline standards for SAFE. (V5:910.) In addition to providing for a fan friendly and safe environment for its invitees, both StadCo and SAFE also focus on

providing positive customer experiences to its invitees. (V5:911, 1037.) In instances when ejections are required, StadCo's employees generally rely on SAFE or law enforcement officers to effectuate the ejections. (V5:900-1, 957-58, 1038.)

B. Procedural History

Plaintiff filed the underlying lawsuit on July 2, 2019. (V2:23.) Stadium Defendants submitted timely answers and the parties engaged in discovery. (V2:38-147, 155-67, 175-223, 227-38, 244-47, 268-71, 277-85; V3:302-3, 308-9, 320-22, 356-69, 373-74, 583-598; V4:599-610, 640-77, 692-97; 703-45, 759-60.) After discovery closed, Stadium Defendants jointly moved for summary judgment on several grounds, including: (i) as related to AMBSE, that AMBSE was an improper party to the lawsuit; (ii) that Appellant assumed the risk of her injuries as a voluntary active participant in the physical altercation; (iii) that Plaintiff failed to exercise ordinary care for her own safety; (iv) that at a very minimum, and not conceding any liability, Plaintiff was contributorily negligent; (v) that Plaintiff failed to present evidence sufficient to satisfy all of the elements of negligence under Georgia law; and (vi) that Stadium Defendants did not have superior knowledge of any risk posed to Plaintiff. (V4:807-844.)

The State Court heard oral arguments by all parties on November 9, 2022. (V15.) Thereafter, the parties were permitted to provide supplemental briefing for the Court's consideration. (V15:53). On December 12, 2022, the State Court entered its Final Order granting the Stadium Defendants' motion for summary judgment. (V2:13.) Plaintiff subsequently appealed. (V2:1-3.)

PART TWO

III. ARGUMENT AND CITATION OF AUTHORITIES

A. Standard of Review

In all cases, "[t]he burden is on the appellant to show error affirmatively by the record, and further, to show that it is harmful." *Ga. – Carolina Brick & Tile Co v. Brown,* 153 Ga. App. 747, 755 (1980). "When the burden is not met, the judgment complained of is assumed to be correct and must be affirmed." *Fleming v. Advanced Stores Co.*, 301 Ga. App. 734, 736 (2009) (citation omitted).

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." O.C.G.A. § 9-11-56(c). In premises liability cases, summary judgment is *especially appropriate* where "the evidence is plain and palpable that the defendants are not liable." *See Houston v. Wal-*

Mart Stores East, L.P. 324 Ga. App. 105, 110 (2013) (finding that video and screenshots taken therefrom was uncontradicted and constituted plain, palpable, and undisputed evidence as to liability in premises liability case); *see also Myrick v. Fulton County, GA.,* 2023 WL 3860263 at *11 (11th Cir.) (related to summary judgment "in cases where a video contradicts the nonmovant's version of the facts, we accept the video's depiction instead and view the facts in the light depicted by the video") *quoting Shaw v. City of Selma,* 884 F. 3d 1093, 1098 (11th Cir. 2018).

A de novo standard of review applies to this appeal from the State Court's grant of summary judgment in favor of Stadium Appellees. *Newton v. Jacobs*, 358 Ga. App. 180, 181 (2021), *cert. denied* (July 7, 2021). Additionally, a grant of summary judgment "must be affirmed if it is right for any reason," especially where a lower court does not specify the basis upon which summary judgment was granted. *See Phinazee v. Interstate Nationalease, Inc.*, 237 Ga. App. 39 (1999) (affirming grant of summary judgment).

B. Response to Specific Enumeration of Error

Appellant contends that the trial court erred in granting summary judgment to StadCo and AMBSE but fails to provide legal authority

supporting its contention[8]. Additionally, Appellant misstated and mischaracterized Stadium Defendants' arguments on summary judgment. *See* Appellant's Brief at 16. Therefore, Appellant's single enumeration of error does not provide a basis for reversing the trial court's order granting summary judgment in favor of Stadium Appellees.

C. Summary of Argument

The State Court properly granted Stadium Defendants' motion for summary judgment. Appellant seeks to misconstrue the record from the lower court to concoct an untenable version of the series of events that took place on September 2, 2017. The record facts as stated above, undisputedly establish all that is needed to affirm the State Court's grant of summary judgment in favor of the Stadium Appellees.

Appellant: (i) observed the Kravers engage in a heated conversation with security staff; (ii) followed them into the tunnel; (iii) observed her then-fiancé aggressively shout expletives at the Kravers and commence a physical altercation by pushing Kraver III who responded by swinging at Hill; (iv) voluntarily approached the physical altercation by taking

[8] Appellant appears to argue that the trial court's order was somehow deficient. As a matter of law, such a finding is inaccurate.

steps towards it; (v) voluntarily engaged in the physical altercation by aggressively pushing into the individuals involved; (vi) after physically engaging in the altercation, fell to the ground and became separated from the physical altercation; (vii) admittedly witnessed Hill engaging in a violent fight in a different location with the Kravers several feet away; (viii) armed herself with a shoe; (iv) ran several feet towards the violent physical altercation to "defend her fiancé"; and (x) repeatedly struck Kraver III on his head with her shoe.

D. The Trial Court Correctly Granted the Stadium Defendants' Motion for Summary Judgment.

1. AMBSE, as Parent Company to StadCo, held no Liability and was not a Proper Party.

StadCo, a wholly owned subsidiary of AMBSE, operates and manages MBS with no direction from AMBSE. AMBSE's status as a parent company of StadCo is not enough to render AMBSE liable under any theory asserted by Appellant. *See Boafo v. Hosp. Corp. of Am.*, 177 Ga. App. 75 (1985) (holding parent company was not liable for subsidiary's conduct where plaintiff failed to prove subsidiary was a shell for the parent company). This Court has explained, "great caution should be exercised in disregarding or going behind the corporate entity" unless "the subsidiary is shown to be the alter ego or business conduit of the

parent." "[I]t must appear that the subsidiary is a mere instrumentality of the parent, 'that the separate personalities of the corporation and the owners no longer exist; and to adhere to the doctrine of corporate entity would promote injustice or protect fraud." *Id.* (quoting *Farmers Warehouse of Pelham v. Collins*, 220 Ga. 141, 150 (1964)). Appellants do not allege those facts, much less provide evidence to support them. The only materials cited as support for Appellant's argument that AMBSE is a proper party are misstatements of deposition testimony and training materials used by SAFE, a third-party security company that contracts directly with *StadCo*. Appellant has failed to point to any evidence supporting piercing the corporate veil due to alter ego, apparent agency, or joint venture. *See Ramcke v. Georgia Power Co.,* 306 Ga. App. 736 (2010). Therefore, the trial court's ruling should be affirmed.

2. Granting Summary Judgment Was Proper Because Appellant Assumed the Risk of Harm by Voluntarily Engaging in Mutual Combat.

While Appellant conveniently attempts to give short shrift in her brief, the trial court rightly determined that she engaged in mutual combat. In a "mutual combat" situation, a plaintiff assumes the risk of injury where the plaintiff is "an active participant in a brawl that left

him injured." *Sailors v. Esmail Int'l*, 217 Ga. App. 811, 813 (1995). By voluntarily engaging in mutual combat, Appellant assumed the risk of harm and consented to whatever risks flowed from her own actions. *See* O.C.G.A. § 51-11-2 ("[N]o tort can be committed against a person consenting thereto if that consent is free, is not obtained by fraud, and is the action of a sound mind."). Where a plaintiff *admits* to voluntarily entering into a physical altercation, summary judgment is appropriate. *See Carter v. Scott*, 320 Ga. App. 404, 407 (2013) (reversing trial court's denial of summary judgment on assumption of risk defense when the plaintiff *admitted* that he intervened in a fight). Similarly, here, Appellant, on more than one occasion, after witnessing aggressive behavior by both Hill and the Kravers, intervened in the physical altercations between them. First, when she pushed into the violent group in the tunnel, and again, when she got up, grabbed her shoe, and ran to the concourse to repeatedly strike Kraver III over the head while he was engaged in an ongoing fight with Hill[9]. The second time, when Appellant

[9] These facts draw a close parallel to *Driver v. Leicht*, 215 Ga. App. 694, 695 (1994), where the Court of Appeals of Georgia held that summary judgment was proper for defendant when the plaintiff was an active participant in a brawl which left him injured after he "willingly drank to excess and became involved in an altercation, and then, after being

ran to the fight in the concourse, she was even more aware of the risks than she was when she physically engaged the Kravers the first time because she had already fallen to the ground and saw "Peter [] getting choked and attacked by two people." Appellant's reasoning for running to join into the fight was because she was trying to "help" Hill, acknowledging that she understood Hill was in danger, or at a minimum, needed "help" when physically engaging with the Kravers. Indeed, Appellant's argument that "Ms. Soundara had no reason to believe the Kravers were about to start a melee" is contradicted by the record. *See* Appellant's Brief at p. 26. Appellant's admission that she saw the fight before she joined it and her reasoning for joining in the fight demonstrates plain, palpable, and undisputed evidence that *prior* to joining the fight that left her injured, she knew of the risks associated with entering a fight with men several times her size, appreciated the risks, and made a conscious decision to engage in the violent fight.

Appellant's reliance on *Richey v. Kroger Company et al.*, 355 Ga. App. 551 (2020) to suggest that Appellant's actions did not constitute

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convinced to leave, voluntarily returned to initiate the encounter which resulted in his injury." *Id.*

voluntarily entering into a melee is deeply flawed. *Richey* is markedly different than the facts in this case. *Richey* involved a decedent who, after witnessing an assailant enter the decedent's parked truck, ran across a parking lot to his truck to confront the assailant and upon reaching his truck smacked the truck's window and was subsequently shot by the assailant who was sitting in the truck. *Richey v. Kroger Company et al.*, 355 Ga. App. 551 (2020). This court in *Richey*, in reversing summary judgment in favor of the defendants, found: (i) that there was no evidence in the record that the decedent, prior to making the decision to confront the assailant, saw the assailant with a weapon, using force, or acting violently in any way; (ii) that the decedent did not inject himself into an ongoing fight or situation which was violent, combative, or assaultive, such that he had a clear and palpable knowledge of the risk of being physically harmed; (iii) that there was no evidence in the record that the decedent approached the assailant with a fear of the assailant being violent toward him; and (iv) that even though the decedent left a place of relative safety prior to approaching the assailant, he did not voluntarily assume a position of imminent danger. *Id.* at 553-554.

While Appellant cites to *Richey*, it is undisputed that the facts at issue in the present case are parallel, not to those in *Richey*, but to those facts in the cases cited by the *Richey* court where this Court *affirmed* summary judgment in favor of defendants. This is true because Appellant voluntarily chose to physically engage with the Kravers just like the plaintiffs in the cases cited by the *Richey* court. For example, the *Richey* court provided the following examples to illustrate the difference between approaching a man sitting in a truck and approaching and engaging in physical combat with others:

> *Habersham Venture,* supra, 244 Ga. App. at 411 (4), 535 S.E.2d 788 (plaintiff "voluntarily chose to enter into mutual combat with the assailants"); *Fagan v. Atnalta, Inc.*, 189 Ga. App. 460, 460-461, 376 S.E.2d 204 (1988) (plaintiff at bar "thrust himself into melee" after a man grabbed a bartender by the collar); *Rappenecker*, supra, 236 Ga. App. at 87-88 (1), 510 S.E.2d 871 (plaintiff injected himself into a volatile situation by confronting a person who blocked his path and spit at him and also conceded that he had probably acted in a manner calculated to put him in a precarious situation); *Cornelius v. Morris Brown College*, 299 Ga. App. 83, 86 (3), 681 S.E.2d 730 (2009) (plaintiff joined a fight already begun)… *Fernandez v. Georgia Theatre Co. II*, 261 Ga. App. 892, 892, 583 S.E.2d 926 (2003) (despite fearing violence from his attacker, plaintiff confronted man who was cursing loudly) … *Shuman v. Masburn*, 137 Ga. App. 231, 235 (3), 223 S.E.2d 268 (1976) (explaining that a person who is injured by voluntarily assuming a position of "imminent" danger when there is

> an accessible place of safety cannot recover against a negligent party)

Richey at 553-555.

In citing to *Richey*, Appellant actually refocuses the Court's attention on the clear and consistently followed Georgia law which establishes that a plaintiff cannot recover from a defendant in a premises liability case such as this one where the plaintiff: (i) voluntarily chooses to enter mutual combat[10]; (ii) thrusts herself into a fight or melee[11]; (iii) inject herself into a volatile situation[12]; (iv) join a fight that had already begun[13]; or (v) despite fearing violence, still deciding to confront someone who has been cursing loudly[14].

Ms. Soundara, on several occasions, put herself in a position of danger when she physically engaged with the Kravers. She had access to many places of safety as evidenced by the many bystanders (representing reasonable people) who chose not to leave their positions of safety to voluntarily engage in physical combat with the Kravers or Hill. The video

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[10] *Sailors v. Esmail Intern., Inc.*, 217 Ga. App. 811 (1995).
[11] *Fagan v. Atnalta, Inc.*, 189 Ga. App. 460, 460-461 (1988).
[12] *Rappenecker*, 236 Ga. App. 86, 87-88 (1999).
[13] *Cornelius v. Morris Brown College*, 299 Ga. App. 83, 86 (2009).
[14] *Fernandez v. Georgia Theatre Co. II*, 261 Ga. App. 892 (2003).

evidence shows that most people, at the sight of hostility between Hill and the Kravers, moved further *away* from the fight while Appellant not only moved closer to the fight, but engaged in it. Georgia courts, in finding that a plaintiff assumed the risk of harm, does not require that a plaintiff engage in a fight, but rather only that the plaintiff unnecessarily exposes herself to a situation she knew or in the exercise of ordinary care, should have known to be dangerous. *See eg. Christian v. Vargas*, 116 Ga. App. 359, 362 (1967) (finding that plaintiff unnecessarily exposed himself to a dangerous situation when he saw an altercation in progress and "stayed around for at least several seconds to see if acquaintance of his was involved therein").

As a matter of Georgia law, as the trial court rightly acknowledged, Appellant's complaint should be summarily dismissed.

3. The Plain, Palpable, and Undisputed Evidence Establishes that Appellant Had Equal or Greater Knowledge of Any Risk of Harm and Failed to Exercise Ordinary Care for Her Own Safety.

Generally, the question of whether a plaintiff exercised ordinary care for her own safety is a question for a jury, however summary judgment is appropriate where, as here, the evidence is so "plain, palpable, and undisputed" that a plaintiff failed to exercise due care.

Weston v. Dun Transportation, 304 Ga. App. 84, 87 (2010). The record video evidence and admissions show that Appellant: (i) observed the Kravers during a heated discussion with security staff; (ii) observed the Kravers engage in a verbal-then-physical altercation with Hill; and (iii) saw Hill "getting choked and attacked by two people." This evidence and testimony of Appellant demonstrates that she had at least equal knowledge of the aggression displayed by Hill and the Kravers *before* she decided to physically engage with the Kravers on both of the two separate occasions.

The record evidence also establishes that the Kravers did not pose any risk of harm to Appellant, and security staff has no reason to believe they did, as the Kravers walked right past Appellant moments before she followed them and engaged in a physical altercation with them by pushing into them from behind.

4. The Record is Devoid of Evidence of Negligence by the Stadium Appellees.

Appellant's failure to introduce any evidence in support of her claim that Stadium Appellees were negligent was fatal to her action and further supports this Court's affirming the trial court's grant of summary judgment in Stadium Appellees' favor. "Negligence is not to be presumed,

but is a matter of affirmative proof." *See Thurman v. TCFPA Family Medical Centers, P.C.*, 358 Ga. App. 439, 440 (2021). In order to survive summary judgment on a negligence claim, a plaintiff is required to point to *specific evidence* giving rise to a triable issue of material fact. *Citing Baja Properties, LLC v. Mattera*, 345 Ga. App. 101 (2018). The only "evidence of negligence" in the record came in the form of deposition testimony where Appellee stated that Stadium Appellees "should have took the guys out," referring to the Kravers. (V13:4936.) However, devoid from the record, is any explanation of any actions Stadium Appellees could have performed to avoid Appellant's voluntary aggressive actions. Where a plaintiff fails to present evidence that "defendant's security was inadequate or that any such inadequacy was the proximate cause of her injuries, summary judgment" is proper. *Collins v. Shepherd*, 212 Ga. App. 54 (1994). Other than Appellant's lay opinion that StadCo should have "took the [Kravers] out" of MBS, Appellant failed to put into the record any evidence establishing negligence by Stadium Appellees. (V13:4936.) Appellant also failed to produce any expert testimony or report that speaks to industry standard stadium management and security principles or whether Stadium Appellees' alleged actions or omissions fell

below an industry-wide standard. Therefore, the trial court was correct to "presume performance of duty and freedom from negligence" based on the absence of evidence of negligence in the record from which a reasonable inference could be drawn that Stadium Defendants were negligent in any way. *Thurman* at 440.

IV. CONCLUSION

This is a quintessential premises liability suit that should not have been filed. The trial court properly granted summary judgment in favor of Stadium Appellees and Appellant has failed to show any error in that ruling. Accordingly, for the foregoing reasons, Stadium Appellees respectfully submit that the Court should affirm the State Court's judgment disposing of Appellant's baseless action.

This 24th day of July 2023,

/s/ *Jarvarus A. Gresham*

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of this **BRIEF OF APPELLEES AMB SPORTS & ENTERTAINMENT, LLC, AND ATLANTA FALCONS STADIUM COMPANY, LLC** upon all counsel of record by emailing this PDF pursuant to prior agreement among the attorneys to accept service by that means as follows:

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Dated: July 24, 2023

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CERTIFICATE OF COMPLIANCE WITH RULE 24

In reliance on the word count of the word-processing system used to prepare the foregoing submission, I certify that this submission does not exceed the word count limit imposed by Rule 24.

Dated: July 24, 2023

/s/ Jarvarus A. Gresham
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