

Not surprisingly, as the Kravers approached the seating bowl, a second fight involving the Kravers erupted. This second fight involving the Kravers quickly turned into a chaotic melee. During this melee at Mercedes-Benz Stadium, Charles Kraver, Jr. grabbed Lynda Soundara by her hair and slammed Ms. Soundara's head onto Mercedes-Benz Stadium's concrete floor.

Although nothing in Atlanta Falcons Stadium Company, LLC, AMB Sports & Entertainment, LLC, or SAFE Management of Georgia, LLC's reports or communications from the events of September 2, 2017 attributed any fault to Lynda Soundara, now they all claim that it was Lynda Soundara's fault that she was attacked during the melee at Mercedes-Benz Stadium.

The trial court granted summary judgment to SAFE Management of Georgia, LLC, but the trial court's order granting summary judgment did not include any finding of fact or conclusion of law or even specify which argument or arguments raised by SAFE Management of Georgia, LLC warranted summary judgment. It is from this ruling that Lynda Soundara now appeals.

Part One – Statement of Case

1) Material Facts Relevant to the Appeal.¹

a. Background on the Entities Providing Safety and Security Services at Mercedes-Benz Stadium.

On September 2, 2017, Atlanta Falcons Stadium Company, LLC (“StadCo”) hosted the Chick-Fil-A Peach Bowl Kick-Off Game between the University of Alabama and Florida State University at Mercedes-Benz Stadium (“the Stadium”). V5-4. StadCo operates the Stadium pursuant to a Stadium License and Management Agreement. V5-2. The Stadium opened to the public in late-August 2017. *Id.* The September 2, 2017 football game was the second sporting event and the first football game hosted by at StadCo at the Stadium. V5-2.

As the venue operator for the Stadium, StadCo was responsible for providing safety and security for fans at the Stadium. V12-278. AMB Sports and Entertainment, LLC (“AMBSE”) and Atlanta Falcons Stadium Company, LLC share services and departments to provide safety and security at Mercedes-Benz Stadium. V12-281.

¹ The record in this case consists of fifteen volumes, designated herein at V1 through V14 and the November 9, 2022 transcript designated as T1. The Record also included video. This Brief references “Pltf’s Exhibits I, J, N, P” which are identified in the Record Index. Ex. I consists of video capturing the fight involving the Kravers in the seating bowl. Ex. J and Ex. N are the Stadium’s surveillance video of the concourse. Ex. P is a video of the second fight involving the Kravers in the tunnel between the seating bowl and the concourse.

In March 2017, StadCo contracted with a security company, SAFE Management of Georgia, LLC (“SAFE Management”), to provide security and crowd management services at Mercedes-Benz Stadium pursuant to a Security Services Agreement. V5-3.

b. SAFE Management and StadCo both had responsibilities to protect fans from violent attacks pursuant to the Security Services Agreement.

Pursuant to the Security Services Agreement, SAFE Management contractually agreed to take particular actions to protect fans at the Mercedes-Benz Stadium from violent conduct, including fights. V12-40; V12-278; V9-400-431. Below is a non-exhaustive list of the security services that SAFE Management was required to provide to protect and benefit patrons, like Lynda Soundara, at Mercedes-Benz Stadium pursuant to the Security Services Agreement.

- 4.1 Services Generally. As requested by Company via a Staffing Requisition, Contractor shall provide Contractor Employees to perform the Services described in this Section 4 (the "Services"), including but not limited to: 4.1.1 **Warn, guard and protect persons** in or about an Event from and against intentional threats, harm or injury;
- 4.2.2 ...Contractor will ensure that the Stadium is staffed appropriately based on the Staffing Requisition....to maintain the **safety of the Stadium and guests...**
- 4.4.1 ...The Operations Manual will set forth operating policies and procedures for...exterior and interior security procedures for the **protection of both persons and property**, and similar matters relating to the responsibilities of Contractor.

4.4.2 ...The Personnel Manual and its training materials, and processes shall emphasize the service nature of Company's operations...the expectation that Contractor Employees will provide the highest quality **service to patrons of Events in the Stadium...**

4.5 Event Operations/Services. Contractor agrees that Contractor Employees shall be responsible for carrying out any Stadium rules and policies and State statutes, laws, regulations, ordinances and policies applicable to persons on the Stadium that are now in effect or that may be issued in the future and **maintain the safety of all Stadium guests, invitees, patrons and employees whether those of Stadium, Team, the Authority, Contractor or another.**

10.1.2 Contractor acknowledges that in addition to the other Services identified herein, **it is specifically being retained to and is responsible for**

(i) **protecting the Stadium and the individuals** and areas in and about the Stadium and the areas immediately adjacent to the Stadium from imminent danger and threats to public safety during the times that Contractor has been engaged by Company (individually and collectively, as applicable, "Occurrence");

(ii) **maintaining public order in and about the Stadium;**

V9-412-414, 420 (**emphasis added**). SAFE Management's agreement to maintain public order in and about the Stadium was a specific obligation to respond to the violent conduct of guests at the Stadium. V9-279.

In addition to the specific safety and security obligations for the benefit of patrons at Mercedes-Benz Stadium, the Security Services Agreement defines SAFE Management's "Standard of Performance" that shows an intention to benefit patrons at Mercedes-Benz Stadium.

1.4 (a) Contractor's employees shall be neat and clean in appearance and **shall be courteous toward the patrons, the public,** Company's

employees, employees of the Team, Event Sponsors and their fellow employees;

- 1.4(c) Contractor and its agents, employees, and representatives shall conduct operations at the Stadium so as to promote the business of the Stadium, **enhance the appeal of the Stadium to patrons**, and **assist Company and the Team in creating an atmosphere that is inviting to patrons**.

V9-404-405.

Per the Security Services Agreement, StadCo was required to develop and provide an Operations Manual to SAFE Management that included “procedures for the protection of both person and property.” V9-414. SAFE Management was also required to develop and provide a Personnel Manual so that SAFE Management’s employees “will provide the highest quality service to patrons.” *Id.*

Per the Security Services Agreement, StadCo was required to provide security equipment to SAFE Management’s employees. V9-417-418. StadCo was specifically required to provide SAFE Management’s employees with radios and ISS Communicator Devices. V9-417-418.

c. SAFE Management and StadCo knew that violent conduct was foreseeable at Mercedes-Benz Stadium.

SAFE Management and StadCo knew that their employees would encounter violent conduct among fans that would require implementing the Stadium’s ejection procedures. V9-444, V12-116. SAFE Management and StadCo knew that fights would occur during football games. SAFE Management’s Director of Operations, Joe

Parr, testified that he was aware of fights occurring at football stadiums and specifically in Atlanta. V11-196. Mr. Parr testified that it was foreseeable that fans or guests at Mercedes-Benz Stadium would get into fights. V11-196-197. Mr. Parr stated, “There’s a potential, yes, for fights.” *Id.* Mr. Parr testified that the reason the stadium had security training and security personnel was specifically because fights were foreseeable. *Id.*

d. Ms. Soundara and the Kravers sat in the same section at the football game, but they did not interact with each other.

Ms. Soundara attended the Chick-Fil-A Kickoff football game with a group of Florida State University fans. V4-196, V13-51-52. Ms. Soundara sat with her group in their seats located in Section 120 of the stadium’s seating bowl. *Id.*

Charles Kraver, Jr. and Charles Kraver, III (“the Kravers”) also attended the Chick-Fil-A Kickoff game V11-27. The Kravers and their group were fans of the University of Alabama. V11-27. The Kravers’ seats were located just behind Ms. Soundara’s group. Ms. Soundara did not have any interaction with the Kravers in the seating bowl. V4-196, V13-70.

e. The Kravers engaged in violent, threatening, and hostile behavior in the presence of StadCo and SAFE Management’s employees.

During the second half of the football game, Ms. Soundara left the seating bowl to use the restroom and purchase a pretzel from a concession stand in the Stadium’s concourse. V13-58. While Ms. Soundara was in the concourse, a fight, involving the

Kravers, erupted in Section 120 of the seating bowl. Ex. I.² at 0:00-1:17; V4-196; V12-258. V14-139-141. The Kravers punched and hit several fans in Section 120 of the seating bowl during this fight. Ex. I at 0:00-1:17; V12-298; V12-17.

Several employees of StadCo and SAFE Management observed the Kravers' violent, hostile, and threatening conduct, which included punching and hitting fans, during the fight in seating bowl. V11-229; and V12-18, 299-300, 304-306. Charles Kraver, Jr. described this fight as "nasty" and "just a free-for-all" and described him and his son as being "just a bull in a ring." V11-40. Ms. Soundara did not observe the Kravers' violent, hostile, and threatening conduct in the seating bowl because she was away from her seat and was in the concourse when this first fight involving the Kravers occurred. V13-59-60.

StadCo's guest services employees physically removed the Kravers from Section 120 of the seating bowl and took the Kravers to the Stadium's concourse just outside the seating bowl. Ex. I at 00:57-01:10; V14-148. Per Mercedes-Benz Stadium's policies and procedures, the SAFE Management employee who witnessed the Kravers' fight in the seating bowl should have reported the fight to a supervisor or law enforcement officer and should not have assumed that a StadCo guest services employee was initiating the ejection process. V12-93-94. The SAFE Management

² Ex. I is video of the Kravers first fight in the seating bowl. In this video, Charles Walton Kraver, III is the man in the white University of Alabama shirt, and Charles Walton Kraver, Jr. is the man in the red striped University of Alabama shirt and red visor.

employee who witnessed the Kravers' fight in the seating bowl remained in the seating bowl and did not report the Kravers' conduct to a supervisor because he assumed the StadCo guest services employee was reporting the fight. V12-365.

At time stamp 11:02:25pm, the Stadium's surveillance video shows the Kravers entering the Stadium's concourse with StadCo's employees, while Ms. Soundara is standing at the ATL Pretzel Co concession stand. Ex. J³ at 58:26. In the concourse, the Kravers continued to exhibit violent, hostile, and threatening behavior in the presence of StadCo and SAFE Management's employees. Ex. N⁴ at 58:29-1:01:03; V11, 271-272.

f. The Kravers should have been ejected from Mercedes-Benz Stadium because of the fight in the seating bowl.

Pursuant to the policies and procedures for StadCo and SAFE Management, the Kravers should have been taken to either an ejection station or a holding cell based on the Kravers' violent, threatening, and hostile conduct in the seating bowl. V12-306. The Kravers should also have been ejected from the Stadium based on the threatening and hostile behavior they exhibited in front of StadCo's employees in the concourse.

³ Exhibit J is surveillance video of the Stadium's concourse showing a concession stand to the right and the tunnel connecting the concourse and seating bowl to the left. At 58:26 of Ex. J, Ms. Soundara can be seen in the jean shorts on the right side of the concession stand.

⁴ Exhibit N is a second surveillance video showing the stadium's concourse, which depicts the Kravers speaking with various Stadium and SAFE Management personnel before returning to the tunnel.

V11, 273. The Kravers were not, however, taken to a holding cell or ejection station to be ejected from the Stadium after their fight in the seating bowl. V12-301.

While in the concourse, there were several opportunities for StadCo's employees to get additional help to eject the Kravers from the stadium. A law enforcement officer walked past the Kravers and StadCo employees in the concourse but was not asked to assist with the ejection of the Kravers. Ex. N at 59:18-59:26; V12-322-323. Then, two SAFE Management employees also walked past the Kravers and StadCo employees in the concourse but were not asked to assist with the ejection of the Kravers. Ex. N at 59:30-59:50; V12-323-324.

g. Instead of being ejected from Mercedes-Benz Stadium, the Kravers were allowed to walk back to the seating bowl.

After being in the concourse with StadCo and SAFE Management employees for over two and half minutes, the Kravers were allowed to walk back toward the seating bowl. Ex. J at 58:25-1:01:05; Ex. N at 58:30-1:00:55; V12-325-326. There is a factual dispute as to how or why the Kravers walked back to the seating bowl. StadCo contends that its employees and security personnel chose to escort the Kravers to the seating bowl to identify other individuals who were involved in the Kravers' fight in the seating bowl. V12-326. There is also evidence that StadCo and SAFE Management's employees tried to stop the Kravers from returning to the seating bowl but did not have enough help to stop the Kravers from going back into the seating bowl. V10-137-138, 163-164.

Whether the Kravers were escorted back toward the seating by StadCo and SAFE Management employees or forced their way back toward the seating bowl by overpowering the inadequately assisted StadCo and SAFE Management employees, the stadium's surveillance video shows the Kravers move from the concourse into the tunnel as they approached the seating bowl. Ex. J: at 1:00:45-1:01:05; Ex. N at 1:00:45-1:01:05.

h. A second fight erupted as the Kravers returned to the seating bowl, and Ms. Soundara was injured when Charles Kraver, Jr. slammed Ms. Soundara to the ground.

There is no dispute, however, that a second fight involving the Kravers erupted as the Kravers walked into the tunnel toward the seating bowl. V13-70. As the Kravers were walking into the tunnel toward the seating bowl, the SAFE Management event security team member and the StadCo guest services employee who witnessed the Kravers' first fight in the seating bowl identified the Kravers as "the guys that caused the problem and that's where the fight breaks out." V12-359.

Just before the Kravers' second fight erupted, Ms. Soundara had finished purchasing her pretzel and walked back toward her seat in Section 120 of the seating bowl. V4-197; V13-65. As Ms. Soundara approached the seating bowl, Ms. Soundara's group told her that they were leaving. V13-66. No one told Ms. Soundara why they were leaving or that they were leaving because of the earlier fight involving

the Kravers, and Ms. Soundara did not know about any violent, threatening, or hostile conduct by the Kravers or anyone else at Mercedes-Benz Stadium that day. *Id.*

Ms. Soundara happened to be standing near the Kravers when the Kravers' walked in the tunnel toward the seating bowl and started the second fight. Ex. J at 1:01:10. The stadium's surveillance video shows Ms. Soundara being knocked to the ground as the Kravers' second fight erupted in the tunnel. Ex. J at 1:01:10. While Ms. Soundara was getting up from being knocked to the ground, the Kravers' fight in the tunnel had already turned into a chaotic melee. V10-152. As Ms. Soundara stood up in the middle of the melee, she saw her then fiancé being held in a headlock by Charles Kraver, III. V13-70-71. Ms. Soundara was confused by the chaos happening around her and testified, "I look up, and then he's in a – someone's attacking him. I'm lost – I don't – I'm confused. I don't know what was going on." *Id.* The stadium's surveillance video shows Ms. Soundara reacting in the middle of this chaotic melee and just a few seconds after she had already been knocked to the ground by slapping Charles Kraver, III with a small object. Ex. J at 1:101:16-17. Ms. Soundara does not "remember hitting them. I remember I had a pretzel. And that's all I remember." V13, 72. At the time of Ms. Soundara's reaction, the Kravers' second fight had already erupted into a melee, and Ms. Soundara had already been knocked to the ground. V10-154.

Ms. Soundara unequivocally testified that she did not intend to join a fight. During her deposition, Ms. Soundara was asked, “Is it true that you got in a fight?” Ms. Soundara responded, “I didn’t get myself into a fight. It was there.” (V13-77).

Next, Charles Kraver, Jr. grabbed Ms. Soundara’s hair and slammed Ms. Soundara’s head to the ground. Ex. J at 1:01:16-21; Ex. N at 1:01:16-21; Ex. P ⁵; V10-151. At the time Charles Kraver, Jr. slammed Ms. Soundara to the ground, StadCo and SAFE Management’s employees had observed the Kravers’ violent behavior at Mercedes-Benz Stadium for “a little over three and a half minutes.” V10-154. Joe Parr, SAFE Management’s Director of Operations, testified that the Mercedes-Benz Stadium’s employees and security personnel “had more knowledge of the violent behavior and the risk of the Kravers than Ms. Soundara.” V10-307.

2) Relevant Proceedings Below

Lynda Soundara filed this action on July 2, 2019. V2-23-36. The defendants were properly served. V2-23-36, 152-154, 173-174, 239-240. The Complaint brought claims of assault and battery against Charles Walton Kraver, Jr. and Charles Walton Kraver, III, and claims of negligence and vicarious liability against AMBSE, StadCo, and SAFE Management. In addition to compensatory damages, Ms. Soundara also

⁵ Ex. P is a video taken inside the tunnel. This video starts after the Kravers’ second fight in the tunnel had already turned into a melee. At 00:04, this video shows Charles Kraver, Jr. throw Ms. Soundara to the ground.

sought punitive damages, attorneys' fees, and expenses of litigation. All defendants answered. V2-175-217, 254-267.

Charles Kraver, Jr. and Charles Kraver, III jointly moved for summary judgment, StadCo and AMBSE jointly moved for summary judgment, and SAFE Management moved for summary judgment. V4-172-201, 206-246, 247-262, V5-1-337, V6-1-1078. After filing responses, V8-292-453, V9-1-636, the trial court held oral arguments on November 9, 2022. T-1-51. The parties filed supplemental briefs, as permitted by the trial court. V10-13-21, 25-34.

On December 12, 2022, the trial court entered three separate orders granting summary judgment for each set of defendants. V2-13-15. The three orders did not specify any findings of fact or conclusion of law on which the trial court used to grant summary judgment. The order granting summary judgment for the SAFE Management states the following in its entirety:

Defendant S.A.F.E. Management of Georgia, LLC's Motion for Summary Judgment having been heard, after considering the motion, Plaintiff's response thereto, the arguments of counsel, all matters of record, and the applicable and controlling law, the Court finds as follows.

For the reasons stated and based upon the authorities relied on by Defendant, the Court finds that summary judgment in their favor is warranted.

WHEREFORE, Defendant S.A.F.E. Management of Georgia, LLC's Motion for Summary Judgment is hereby GRANTED. Judgment is entered in favor of that defendant on Plaintiff's claims.

V2-15. Plaintiff filed a timely appeal for each order granting summary judgment. V1-1-3, 4-6, 7-9.

3) Each Enumerated Error was preserved for review (with citations).

The arguments raised herein and upon which error is alleged were raised before the trial court in Ms. Soundara's briefs in opposition to the motions for summary judgment filed by StadCo and AMBSE, SAFE Management, and the Kravers. V8-292-453, V9-1-636, V10-13-21. They were also raised at oral argument before the trial court on November 9, 2022. T31-42, 51-52.

Part Two – Enumeration of Errors and Jurisdictional Statement

1. The Trial Court erred in granting summary judgment to SAFE Management. O.C.G.A. § 5-6-40.

The Court has jurisdiction over this appeal insofar as the action is not within the class of actions as to which original appellate jurisdiction is vested or exclusively vested in the Supreme Court.

Part Three – Argument and Citation of Authority

1. Standard of Review

A trial court's granting of summary judgment is reviewed under a de novo standard of review. *Richey v. The Kroger Co.*, 355 Ga. App. 551, 551 (2020). When ruling on a motion for summary judgment, Ms. Soundara, the non-movant, should be given the benefit of all reasonable doubt. *Id.* The evidence and all inferences and conclusions therefrom should be construed in the light most favorable to Ms. Soundara. *Id.*

2. The Trial Court erred in granting summary judgment to StadCo and AMBSE.

Lynda Soundara urges this court to reverse the trial court's grant of summary judgment to SAFE Management of Georgia, LLC. As noted above, although SAFE Management raised several arguments for why it believed summary judgment should be granted, the trial court's ruling did not specify which of SAFE Management's arguments served as the basis of the court's ruling. This brief addresses each argument raised in SAFE Management's motion for summary judgment and supportive briefing.

SAFE Management provided the following arguments in support of their motion for summary judgment. First, SAFE Management argued that it did not owe Lynda Soundara a duty based on the claims that patrons, like Ms. Soundara, at Mercedes-Benz Stadium were not third-party beneficiaries under the terms of the Security Services Agreement. Second, SAFE Management argued that even if SAFE Management owed Ms. Soundara a duty, that SAFE Management did not breach any duty owed to Ms. Soundara. Third, SAFE Management argued that Ms. Soundara's negligence claims should be barred based on SAFE Management's allegation that Ms. Soundara "voluntarily inserted herself into an ongoing physical confrontation between other individuals."

As explained below, all three of SAFE Management's arguments fail as they are based on highly disputed factual allegations and misstatements of applicable law.

- a. There is more than sufficient evidence in the record that SAFE Management owed a duty of care to Lynda Soundara as a third-party beneficiary under the terms of the Security Services Agreement.**

SAFE Management's argument that it did not owe Ms. Soundara a duty a third-party beneficiary under the terms of the Security Services Agreement relies almost exclusively on one sentence in Section 14.8.1 of the Security Services Agreement. That paragraph states, "Except as otherwise expressly stated herein nothing in this Agreement is intended to or shall confer upon any other Person, any rights or remedies of any nature whatsoever." R9-425. SAFE Management's reliance on this sentence ignores, however, the extensive, expressed statements in the Security Services Agreement that SAFE Management intended to take on security obligations for the benefit and for the protection of patrons at Mercedes-Benz Stadium, like Lynda Soundara. *Archer W. Contractors, Ltd. v. Estate of Estate of Pitts*, 292 Ga. 219, 226 (2012) (Notwithstanding the ultimate purpose of an agreement, individual contract provisions may be intended to benefit a stranger to the contract, thus creating a third-party beneficiary.).

SAFE Management's brief in support of its motion for summary judgment relies heavily on this Court's opinion in *Fair v. CV Underground, LLC* 340 Ga. App. 790 (2017). In *Fair v. Underground*, a security contract, which included general "public safety services" language, did not show a clear intent to confer a direct benefit to "patrons" at a shopping center. *Id.* at 798. The security services discussed in that

contract referred to “on-site security and public safety services” for the shopping center’s property, but the security contract did not “mention ‘patrons,’ ‘customers,’ ‘shoppers,’ ‘visitors,’ or any other term that describes [the property’s] invitees.” *Id.*

On the other hand, the Security Services Agreement between SAFE Management and StadCo shows a clear intent to confer a direct benefit on patrons, fans, and guests at Mercedes-Benz Stadium. The Security Services Agreement that SAFE Management entered specifically names “fans,” “guests,” “persons,” “patrons,” “attendees,” and “invitees” as individuals that would benefit from SAFE Management’s security services and obligations under the agreement. *See generally* V9-400-431.

Per the terms of the Security Services SAFE Management to on the responsibility of protecting fans, like Lynda Soundara, from violent attacks of other fans. These obligations included “4.1.1 Warn, guard, and protect persons in or about an Event from and against intentional threats, harm or injury,” “4.1.5 Provide Crowd control,” and “4.1.9 Provide other Security Services as requested by Company.” V9-412.

In the agreement, SAFE Management specifically agreed to “maintain the safety of all Stadium guests, invitees, patrons and employees.” V9-414. The agreement provides that SAFE Management “acknowledges...it is specifically being retained to and is responsible for (i) protecting the stadium and the individuals and

areas in and about the Stadium... [and] (ii) maintaining public order in and about the Stadium.” V9-420.

Additionally, SAFE Management’s “Standard for Performance” under the Security Services Agreement required SAFE Management’s employees to be “courteous toward the patrons” and “enhance the appeal of the Stadium to patrons, and assist Company and the Team in creating an atmosphere that is inviting to patrons.” V9-404.

Unlike the security contract in *Fair v. Underground*, which only referred to policies and procedures for the protection of property, the Security Services Agreement in this case specifically required SAFE Management to follow “exterior and interior policies and procedures for the protection of both persons and property.” V9-414. The expectation under the Security Services Agreement was for SAFE Management’s employees to “provide the highest quality service to patrons of Events in the Stadium.” V9-414.

Finally, StadCo specifically entered into the Security Services Agreement with SAFE Management to provide safety and security for fans at Mercedes-Benz Stadium. V12-38. Therefore, pursuant to the express terms of the Security Services Agreement, Lynda Soundara was a third-party beneficiary of the obligations SAFE Management undertook to protect patrons such as Lynda Soundara from the threat of violent conduct from other fans at Mercedes-Benz Stadium.

i. There is more than sufficient evidence for a jury to find that SAFE Management breached its duty owed to Lynda Soundara.

There is more than sufficient evidence in the record for a jury to find that SAFE Management breached the duty it owed to warn, guard, and protect Lynda Soundara from the intentional threats and violent conduct of the Kravers.

The Stadium Defendants and SAFE Management have both admitted that violent criminal conduct during football games at Mercedes-Benz Stadium was foreseeable. SAFE Management's Director of Operations, Joe Parr, testified that he was aware that fights occur at football stadiums and specifically in Atlanta. V11-196. Mr. Parr testified that it was foreseeable that fans or guests at Mercedes-Benz Stadium would get into fights. V11-196-197. Mr. Parr stated, "There's a potential, yes, for fights." *Id.* Mr. Parr testified that the reason the Mercedes-Benz Stadium required security training and hired security personnel was specifically because fights were foreseeable at Mercedes-Benz Stadium. *Id.* This was why SAFE Management's training materials unequivocally explained that SAFE Management's employees would encounter fans who violated the Stadium's Code of Conduct and require initiation of the Stadium's ejection procedures. V12-116.

Further, StadCo and SAFE Management's employees had actual knowledge of the threat the Kravers' posed to Ms. Soundara. StadCo and SAFE Management's employees observed the Kravers' first fight in the seating bowl. V11-229; and V12-

18, 299-300, 304-306. After observing the Kravers' first fight, StadCo and SAFE Management's employees continued to interact with the Kravers in the concourse for over two and a half minutes before the Kravers' second fight erupted in the tunnel. Ex. J at 58:25-1:01:05; Ex. N at 58:30-1:00:55; V12-325-326. Joe Parr, the Director of Operations for SAFE Management, testified that Mercedes-Benz Stadium's employees and security personnel had superior knowledge of the Kravers' violent behavior and the risk of the Kravers than Ms. Soundara. V11-307.

ii. There is more than sufficient evidence that SAFE Management breached its duty by failing to take reasonable steps to guard Ms. Soundara from the Kravers' violent conduct and violating SAFE Management's own policies and procedures.

There is more than sufficient evidence in the record for a jury to find that the Stadium Defendants and SAFE Management failed to exercise ordinary care to protect Lynda Soundara from the Kravers' violent attacks. Here, there are a series of violations of Mercedes-Benz Stadium's own policies and procedures that a jury could find breached the Stadium Defendants and SAFE Management's duty.

1. StadCo and SAFE Management failed to report the Kravers' first fight in the seating bowl to the Stadium Operation Center.

According to StadCo and SAFE Management's own policies and procedures, StadCo and SAFE Management's employees should have immediately reported the Kravers' violent attack in the seating bowl to the Stadium Operation Center. V12-27-

28, 117. StadCo and SAFE Management's employees did not, however, immediately report the Kravers' violent conduct to the Stadium Operation Center. One of the reasons the employees did not immediately report the Kravers' first fight in the seating bowl to the Stadium Operation Center was because StadCo failed to provide SAFE Management's employees with radios and ISS Communication devices – a violation of StadCo's obligations under the Security Services Agreement. V12-99.

The SAFE Management employee should have reported the Kravers' fight to a supervisor or to a law enforcement officer. V12-93-94. It violated SAFE Management's policies and procedures to fail to report the fight to a supervisor based on an assumption that a Mercedes-Benz Stadium employee was reporting such a fight in the seating bowl. V12-93-94. The SAFE Management employee who witnessed the Kravers' fight in the seating bowl did not, however, report the fight to a supervisor because he assumed that the StadCo guest services employee who took the Kravers to the concourse was initiating the ejection and reporting the fight. V-12-365. This was a violation of SAFE Management's own policies and procedures.

2. StadCo and SAFE Management failed to eject the Kravers following the Kravers' first fight in the seating bowl.

According to StadCo and SAFE Management's own policies and procedures, StadCo and SAFE Management's employees should have taken the Kravers to either an ejection station or holding cell based on the Kravers' violent attack in the seating

bowl. V9-289-290, V12-48-49, 153, 306. The policy requiring that fans engaging in violent conduct be ejected was a “minimal standard” for SAFE Management. V12-350. This policy was important to follow specifically for the safety of the other fans at the stadium. V12-290.

StadCo and SAFE Management’s employees failed to immediately eject the Kravers from Mercedes-Benz Stadium after the Kravers punched and hit fans in the seating bowl. V12-301, 367. Instead, the Kravers remained in the Stadium’s concourse for over two and a half minutes with a rotating group of StadCo and SAFE Management employees before the Kravers were allowed to walk back toward the seating bowl – over three and half minutes after the Kravers had attacked fans in the seating bowl. V10-154.

3. StadCo and SAFE Management failed to stop the Kravers from returning to the seating bowl and actually brought the Kravers back to the people they had already attacked.

StadCo and SAFE Management should never have allowed the Kravers to walk back toward the seating bowl after the Kravers had attacked people in the seating bowl. V12-343. When the Kravers walked back to the seating bowl, there is no evidence that any StadCo or SAFE Management employee had recommended that the Kravers be ejected from the Stadium. V12-120. In fact, StadCo contends that its employees were intentionally bringing the Kravers back into the seating bowl to bring the Kravers closer to the people they had attacked just three minutes earlier. V12-326.

A jury could easily determine that bringing the Kravers back toward the seating bowl and the people the Kravers had just attacked was a breach of StadCo and SAFE Management's duty.

Alternatively, there is evidence that StadCo and SAFE Management failed to get adequate support to stop the Kravers from returning to the seating bowl. Kenneth Fortson, the SAFE Management employee who was with the Kravers when they walked back toward the seating bowl, testified that he tried to prevent the Kravers from returning to the seating bowl. V10-137-138. Mr. Fortson testified that he should have taken action to prevent the Kravers from returning to their seats because "they are visibly upset." V10-138. Mr. Fortson testified that there were other safer ways to identify any other individuals that had fought in the seating bowl, including other "witnesses in the stands and we have seating hosts that are there too. So I wouldn't let an angry guest go back into the seating bowl. *Id.* Mr. Fortson testified that

[t]here probably should have been somebody else over there more to just help de-escalate. And not just for the Kravers' sake, but just to – you got other guests walking by. You know, we want to make sure that they're not involved in anything as well. So it's not just about the Kravers, it's other guests, 72,000 people in there we got to make sure are okay.

V10-163. Mr. Fortson testified that additional help was needed and stated "I mean, looking at the video now and knowing what happened, yeah, we probably needed more people over there to help keep them from getting back into the seating bowl." V10-164.

iii. The Stadium Defendant SAFE Management’s failure to eject the Kravers from Mercedes-Benz Stadium and intentional decision to bring the Kravers back to the seating bowl caused Ms. Soundara’s injuries.

A jury could easily find that had the Stadium Defendants and SAFE Management simply followed their own policies and procedures by immediately reporting the Kravers’ first fight to the Stadium Operation Center, ejecting the Kravers from Mercedes-Benz Stadium after the Kravers’ first fight, and stopping the Kravers from returning to the seating bowl, then the Kravers’ second fight in the tunnel would not have happened and Ms. Soundara would not have been slammed to the ground.

b. Ms. Soundara’s actions the day she was injured at Mercedes-Benz Stadium were reasonable, and Ms. Soundara certainly did not lack ordinary care for her own safety as a matter of law.

The only common argument that all of the defendants in this case raised in their motions for summary judgment was their contention that Ms. Soundara lacked ordinary care for her own safety as a matter of law by allegedly “voluntarily entering an ongoing affray.” This argument is based on conclusory, highly disputed, and even false factual assertions, and ignores the actual legal standard for applying this affirmative defense.

i. There is no plain, palpable, or undisputed evidence that Ms. Soundara lacked ordinary care as a matter of law.

The operative question at summary judgment on this issue is whether the undisputed material evidence – with all benefit of reasonable doubt given to plaintiff

– is plain, palpable, and undisputed such that the issue of the plaintiff’s ordinary care or lack of ordinary care should be withheld from the jury outright. *Richey v. The Kroger Co.*, 355 Ga. App. 551, 555 (2020).⁶ When the evidence is construed most favorably toward Ms. Soundara, as it must be, there is no plain, palpable, or undisputed evidence that supports a finding as a matter of law that **no** prudent person would have reacted as Ms. Soundara did under the circumstances of being knocked to the ground in the middle of a violent and chaotic melee. *Id.*

The cases cited by the defendants in support of their argument show that a person lacked ordinary care as a matter of law when there was undisputed evidence that the person observed an ongoing fight from a position of safety and then voluntarily and deliberately left the safe location to assume a known risk of the ongoing fight.

In *Fagan v. Atnalta*, the plaintiff observed a man grab a bartender by the collar, recognized the danger to himself of approaching the situation, and voluntarily and deliberately thrust himself into the melee.” 189 Ga. App. 460, 460-461 (1988). The plaintiff in *Fagan*, testified that he knew that approaching the situation would put him “in big trouble” and he “could be hurt.” *Id.*

⁶ All defendants in this matter argued that Ms. Soundara should be precluded from recovery based on a “voluntarily entering the affray” defense, but none of the defendants cited this Court’s most recent opinion addressing this affirmative defense in *Richey v. The Kroger Co.*

In *Habersham Venture Ltd. v. Breedlove*, the plaintiff was in a position of safety when he observed his future assailant stab the plaintiff's friend. 244 Ga. App. 407, 409 (2000). Then, the plaintiff went to the trunk of his car, retrieved an aluminum bat, walked to the person who had just stabbed his friend, and hit the person with an aluminum bat. All of this happened before the plaintiff was ever hit or attacked. *Id.*

In *Rappenecker v. L.S.E., Inc.*, the plaintiff deliberately opted to leave the safety of his vehicle in order to confront a person who had blocked his path and spit at him. 236 Ga. App. 86, 87-88(1999). The plaintiff even testified that getting out of his car and confronting the man probably put him in a precarious position. *Id.*

In *Cornelius v. Morris Brown College*, the plaintiff observed an ongoing fight from a known position of safety across the street. 299 Ga. App. 83, 86 (2009). The plaintiff voluntarily left his known position of safety and ran across the street to join the ongoing fight. *Id.* All of this occurred before the plaintiff was ever hit or attacked. *Id.*

Unlike the above cases, Ms. Soundara unequivocally testified that she did not intend to join a fight. During her deposition, Ms. Soundara was asked, "Is it true that you got in a fight?" Ms. Soundara responded, "I didn't get myself into a fight. It was there." (V13-77).

This situation is more analogous to the facts and circumstances in *Richey v. The Kroger Co.* 355 Ga. App. 551 (2020). In *Richey*, the plaintiff observed a possible car

thief enter the plaintiff's car. At 551. Then, the plaintiff ran to his car his car and slapped the window of his car before the car thief shot the plaintiff. *Id.* Although the plaintiff may have known that there was a risk to confronting a car thief, the plaintiff never observed the car thief display violent or threatening conduct, the plaintiff did not know the car thief had a weapon, and the plaintiff did not have any reason to believe he was at risk of being shot and murdered when he approached his car and slapped the window. *Id.*

The Court held that it could not find as a matter of law, “that *no* prudent person would have acted as [Richey] did under the circumstances.” *Id.* at 553. The Court could not say the plaintiff tested “an observed and clearly-obvious peril, such that he lacked ordinary care for his safety as a matter of law.” *Id.* (internal quotations omitted). Similarly, Ms. Soundara never tested an observed and clearly-obvious peril. The fight was already there by the time Ms. Soundara reacted.

ii. Ms. Soundara's reaction did not occur until AFTER she had already been knocked down in the melee, and there is no evidence that Ms. Soundara left a known position of safety or decided to take on any risk.

Here, before the melee erupted and Ms. Soundara was knocked to the ground, Ms. Soundara did not observe any violent conduct by the Kravers or anyone else at Mercedes-Benz Stadium, Ms. Soundara had no reason to believe the Kravers were about to start a melee, and Ms. Soundara certainly had no reason to believe she was at risk of being slammed to the ground by Charles Kraver, Jr. Further, there is no evidence that suggests that Ms. Soundara was in a known position of safety in the two

or three seconds between being knocked to the ground and reacting in the middle of the melee by smacking Charles Kraver, III in the middle of the melee. There is no evidence that Ms. Soundara was aware – or even had an opportunity to become aware – of the risk of being caught in the melee. Finally, there is no evidence that Ms. Soundara tested an observed and clearly obvious peril. Ms. Soundara was caught in a violent, chaotic melee, and Ms. Soundara reacted to being caught in a violent, chaotic melee.

iii. The defendants in this action even dispute their own factual allegations over when each of the defendants claim Ms. Soundara supposedly entered the affray.

As explained above, there is no evidence – let alone undisputed evidence – that Ms. Soundara did not leave a known position of safety to voluntarily insert herself in an ongoing fight with the Kravers. In fact, the defendants have raised contradictory versions of when each set of defendants alleges that Ms. Soundara supposedly entered mutual combat with the Kravers.

SAFE Management argued that Ms. Soundara assumed the risk when she walked to the group “followed the Kravers and security personnel” into the tunnel. V4-261. In this version of the facts, Ms. Soundara observed the Kravers interactions with Stadium’s employees and security guards in the concourse, Ms. Soundara knew that the Kravers posed a threat to her, and Ms. Soundara assumed the risk of being attacked by the Kravers by following the Kravers into the tunnel. *Id.*

The Stadium Defendants argued that Ms. Soundara voluntarily entered the fight by reaching or pushing into the Kravers group in the tunnel as the fight erupted and before Ms. Soundara was knocked to the ground. V5-10. In this version of the facts, Ms. Soundara intended to engage in combat with the Kravers just a few seconds before she was knocked to the ground. *Id.*

Finally, the Kravers argued that Ms. Soundara didn't enter the affray until after she was knocked to the ground. V4-198. In this version of the facts, when Ms. Soundara stood up in the middle of the melee, the Kravers contend that Ms. Soundara was in position of safety, understood she was in a position of safety, knew the risk of Charles Kraver, Jr. slamming her to the ground, and voluntarily undertook that risk – all in a matter of two or three seconds.

These three different and incompatible factual explanations of when the various defendants argue that Ms. Soundara voluntarily entered into an affray show that there is not plain, palpable, or undisputed evidence to warrant summary judgment. During the hearing on the summary judgment motions, the Kravers' counsel acknowledged that factual question of Ms. Soundara's reasonableness would be different depending on when she allegedly entered the fight. V15-45. Counsel for the Kravers described this as a "continuum" and acknowledged that the issue of whether Ms. Soundara engaged in an affray before she was initially knocked down would be a "harder case." *Id.* At the very least, "harder cases" where there are disputed facts in the determination

of where a plaintiff's reasonableness falls on a continuum should always be a question of fact for a jury to decide.

Conclusion

StadCo, AMBSE, and SAFE Management knew that fans would engage in violent conduct at Mercedes-Benz Stadium. In fact, StadCo, AMBSE, and SAFE Management put together reasonable policies and procedures to address violent conduct and protect fans from violent conduct. Unfortunately, on September 2, 2017, StadCo, AMBSE, and SAFE Management failed to follow their own policies and procedures. This failure resulted in the melee erupting that led Ms. Soundara to be slammed to the ground.

Now, SAFE Management is trying to blame Ms. Soundara for reacting in the middle of a chaotic melee that SAFE Management could have and should have prevented if SAFE Management had only followed its own policies and procedures. At the very least, the question of where Ms. Soundara's conduct lands on a continuum of reasonableness is a question that should be decided by a jury and does not warrant summary judgment. Therefore, Lynda Soundara respectfully requests that this Court reverse the trial court's order and permit a jury to hear the facts.

Respectfully submitted, this 13th day of June, 2023.

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CERTIFICATE OF SERVICE

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