IN THE COURT OF APPEALS
STATE OF GEORGIA

LYNDA SOUNDARA, Appellant, v. S.A.F.E. MANAGEMENT OF GEORGIA, LLC, Appellee.	)	Appeal No. A23A1451

BRIEF OF APPELLEE S.A.F.E. MANAGEMENT OF GEORGIA, LLC

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I. INTRODUCTION

This appeal arises from a straight-forward personal injury case. Appellant Plaintiff Lynda Soundara was injured at a football game at Mercedes-Benz Stadium in Atlanta, Georgia. While at a game, she imbibed multiple alcoholic beverages to the point of intoxication. As the game drew to a close, she willingly inserted herself into a physical confrontation between her (then) fiancé Peter Hill and another patron, Defendant Charles Kraver, III by taking off her shoe and striking Charles Kraver, III. When Charles Kraver, III's father, Defendant Charles Kraver, Jr., saw Appellant using her shoe as a weapon against his son he threw Appellant off his son and down to the ground, causing her alleged injuries.

Rather than accept responsibility for her actions, Appellant sued the owners of the stadium, the security contractors, the Kravers, and the host of the event (Peach Bowl, Inc.), alleging negligence. The evidence shows both that the security contractors (S.A.F.E.) were not owners/occupiers of the premises and that S.A.F.E. did not commit any negligent acts causing Appellant's injuries, and that Appellant's claims ultimately must fail due to the fact that her own actions were the ultimate cause of her injuries.

II. STATEMENT OF THE CASE

a. Response to Appellant's Statement of Facts

Appellant's "Statement of Facts" distorts or omits several key facts. Therefore, in response to Appellant's Statement of Facts, Appellee provides its own statement of facts in order to complete the record. As Appellant notes, the case at hand stems from an altercation between fans of opposing college football teams at the September 2, 2017 Chick-fil-A Peach Bowl Kick-Off Game (the "Game"). The Game, between the University of Alabama and Florida State University football teams, was held at the then-new Mercedes-Benz Stadium ("the Stadium") in Atlanta, Georgia. (V11:4302). Defendant Atlanta Falcons Stadium Company, LLC ("Stadco") served as the venue operator of the Stadium for the Game, while Peach Bowl Incorporated was a lessee of Stadco for use of the Stadium.[1]

S.A.F.E. Management of Georgia, LLC contracted with Stadco in 2017 to provide event security services at the Stadium pursuant to a Security Services Agreement (the "Agreement"). (V12:4483; V6:1530-1561). The Agreement was in effect for the Game, and S.A.F.E. provided the staffing for security services in and around the Stadium during the Game. (V12:4484). Appellant cited multiple clauses from the Agreement in an attempt to impose a duty to Appellant on S.A.F.E. but

[1] Stadco's parent organization, AMB Sports and Entertainment ("AMBSE"), is also a defendant in this litigation. (12:4722).

neglected to mention the Agreement directly speaks to this issue, and notes in a "General Statement Regarding Third Party Beneficiaries" that "nothing in this Agreement is intended to or shall confer upon any other Person, any rights or remedies of any nature whatsoever." (V:26:1555, ¶14.8).

S.A.F.E. security personnel underwent thorough training prior to their deployment at the Stadium. This consists of a six-step training process including a background-check, Certified Sport Venue Staff (CSVS) Training offered by the National Center for Spectator Safety and Security (NCS4), and the on-site "Welcome Home Training," which is more specific to the Stadium. (V12:4482-83, 4493-93). The training addresses methods and procedures to keep the guests safe by defusing potentially volatile situations. (V12:4495). S.A.F.E. policies also include investigating incidents to determine whether fans should simply be ejected from the event. (V11:4339). Specifically, S.A.F.E.'s training on how to manage situations involving disturbances and unruly fans includes separating the parties, trying to get information, obtaining statements (including non-biased accounts of other witnesses) and then potentially ejecting fans that break the Fan Code of Conduct. (V11:4339). This also includes potentially contacting law enforcement if necessary. (Id.). These steps are important given S.A.F.E. and Stadco's desire to provide a positive customer experience to its patrons. (V12:4514).

Turning to the subject incident, Appellant Lynda Soundara attended the Game with her then-fiancé, Peter Hill, and several of Mr. Hill's family members. (V13:4872). Appellant's party were FSU fans. (V13:4909). Her party was sitting near the Kravers, who were Alabama fans, during the Game. (V14:5308) At some point in the fourth quarter of the Game Appellant left the seating bowl to purchase a pretzel from a concession stand located in the concourse. (V13:4916). Appellant had been drinking during the Game, and testified that by this point of the Game she was "drunk." (V13:4935). While Appellant was in the concourse getting a pretzel, members of her party instigated a physical confrontation with the Kravers in or near their seats in the seating bowl. (Kraver III Depo., 55:15-21). Following standard practice, stadium security personnel then escorted the Kravers out of the seating bowl and into the concourse in order to deescalate the situation and ascertain exactly what happened so security personnel could properly handle the situation. (V12:4551). As security personnel did not yet know who was at fault for the quarrel, they needed to speak with the Kravers to determine who was responsible for the altercation, and whether it was necessary to eject any customers from the Stadium to ensure the safety of other patrons. (V12: 60:4743, 4756; V10:3803).

Appellant claims that S.A.F.E. employees observed the "Kravers' violent, hostile, and threatening conduct, which included punching and hitting fans during the fight in [sic] seating bowl." Appellant's Brief at 8. However, the cites provided

by Appellant do not prove support Appellant's claim as the evidence does not demonstrate what S.A.F.E. employees actually observed while the Kravers were in the seating bowl. This point is significant, because when Stadco and S.A.F.E. employees arrived to address the disturbance, they did not know exactly what transpired, and which party was the aggressor.

As S.A.F.E.'s designated expert witness in the field of stadium security, William D. Squires, averred in his Affidavit supporting S.A.F.E.'s Motion for Summary Judgment, stadium security personnel (including S.A.F.E. employees)'s sequestering of the Kravers in the stadium concourse to discuss the origins of the initial confrontation was reasonable and in accordance with industry standards. (V6:2275-2287). This is because "it is standard and acceptable practice to deescalate the situation and investigate the disturbance by obtaining the customer's version of events. This included allowing the Kravers to identify the other parties involved in the confrontation." (Id.) Mr. Squires' testimony is uncontroverted; Appellant's claim that S.A.F.E. employees should have taken the Kravers to a holding cell ignores the knowledge available to security employees, as well as industry standards, is without merit. Appellant's Brief at 9.

Appellant's then-fiancé, Peter Hill, quickly left the seating bowl and entered the concourse shortly after the Kravers were themselves escorted out; when he saw Appellant as she was returning to her seat, he informed her they were leaving.

(V13:4923-24). Mr. Hill then went to the restroom in the concourse directly outside the seating bowl while Appellant waited in the concourse. (V13:4925). While her then-fiancé was using the restroom, Appellant noticed the Kravers speaking with security personnel. (V13:4927). Appellant recognized the Kravers as the party sitting behind Appellant's party in the seating bowl. (V13:4927-28).

After speaking with stadium security personnel in the concourse, Kraver, Jr. and Kraver, III began heading toward the seating bowl with security personnel so the Kravers could point out Appellants' party as the aggressors in the physical confrontation in the seating bowl. (V11:4208-09). This can typically safely be done from the vomitory (which connects the seating bowl and the concourse) and is sometimes a necessary action so that security personnel can identify potentially dangerous individuals still located in the seating bowl. (V12:4553). Appellant, who had been observing the Kravers speaking with security personnel in the concourse, immediately followed the Kravers and security personnel into the vomitory. (V11:4238).

Before the Kravers and security personnel could reach an area from where they could point out Appellant's party to security personnel, they were met by Peter Hill (who had just left the restroom in the concourse) and other members of Appellants' party. (V11:4239). At that juncture, Mr. Hill taunts Kraver, III into continuing the altercation that started in the seating bowl, which led to Mr. Hill and

Kraver, III to begin fighting (this fight appears to begin in the vomitory but quickly moves back into the concourse). (V14:5401-02). Appellant, who had purposely followed Kraver, III into the vomitory, appears in security footage of the incident to run to participate in the fight in the vomitory but is knocked to the ground. (V12:4648-49; V12:4780-81).

After Appellant fell to the ground she immediately stood back up, bent over and appeared to pick up her shoe, darted toward the fight between Kraver, III and Mr. Hill, and began to repeatedly strike Kraver, III in the head with her shoe. (V13:4929-30:16–8; V11:4395; V10:3929). According to Kraver, III, Appellant's blows knocked out his tooth. (V14:5315-16). At this point Kraver, Jr. grabbed Appellant and threw her to the ground, causing her alleged injuries. (V11:4185-86). The fight was broken up by security personnel, and the Kravers were eventually arrested. (V11:4229). Though Kraver, Jr. was criminally charged for his actions, the Court determined that he was immune from prosecution as Kraver, Jr. was "justified in his actions to Ms. Soundara…" (V5:1183).

b. Procedural History

The instant lawsuit was filed on July 2, 2019. (V2:23.) S.A.F.E. timely answered and conducted discovery. After the close of discovery, S.A.F.E. moved for summary judgment on several grounds, including: (i) S.A.F.E. Did Not Owe Appellant a Duty as Alleged in Appellant's Complaint; (ii) there is no evidence that

S.A.F.E.'s employees were negligent in the performance of their responsibilities under the Agreement; (iii) Appellant voluntarily inserted herself into an ongoing physical confrontation between other individuals and therefore cannot recover from S.A.F.E.

The State Court heard oral arguments on November 9, 2022. (V15.) The parties subsequently provided supplemental briefing for the Court's consideration. (V15:53). On December 12, 2022, the State Court entered its Final Order granting S.A.F.E.'s motion for summary judgment. Appellant subsequently appealed. (V2:1-3.)

III. ARGUMENT AND CITATION OF AUTHORITIES

a. Standard of Review

A de novo standard of review applies to an appeal from a grant or denial of summary judgment. Newton v. Jacobs, 358 Ga. App. 180, 181, 854 S.E.2d 359, 361 (2021), cert. denied (July 7, 2021). To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in a light most favorable to the party opposing the motion, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); Martin v. Hansen, 326 Ga. App. 91 (2014). On summary judgment, a moving party who will not bear the burden of proof at trial need not conclusively disprove every element of the non-moving party's case. Rather, the movant may demonstrate by reference to

the record that there is an absence of evidence to support just one essential element of the non-moving party's case. See Lau's Corp. v. Haskins, 261 Ga. 491 (1991). Once the movant identifies an absence of evidence on that point, the non-moving party must come forward with admissible evidence giving rise to a triable issue regarding that element. Id. If there is no evidence to create an issue of fact as to that essential element of the claim, the claim "tumbles like a house of cards," and any remaining disputes of fact are rendered immaterial. Id.; see Holiday Inns, Inc. v. Newton, 157 Ga. App. 436 (1981).

b. The trial court properly granted S.A.F.E.'s Summary Judgment Motion as S.A.F.E. did not owe Appellant a duty of care as a third-party beneficiary under the terms of the Agreement

Appellants First enumeration of error alleges that S.A.F.E. owed a duty of care to Appellant as a third-party beneficiary under the terms of the Agreement. Appellant's Brief at 17. Appellee attempts to distinguish Fair v. CV Underground, LLC, 340 Ga. App. 790, 794, 798 S.E.2d 358, 363 (2017), cited by Appellee in its Motion for Summary Judgment as the security agreement in that case did not mention "patrons". Appellant's Brief at 17-18. However, Appellant's citations to the mention of S.A.F.E.'s contractual obligations to the Stadium Defendants to "maintain the safety of" guests and patrons does not change the outcome in this case, as illustrated by CDP Event Servs., Inc. v. Atcheson, 289 Ga. App. 183, 656 S.E.2d

537, (2008). In that case, the Court analyzed a contract with language similar to the instant case. Specifically, the security agreement in CDP stated:

> [CDP] agrees to provide personnel including, but not limited to, personnel engaged in crowd control, audience management, access control, ticket entrance taking, and backstage security at the [HiFi Buys Amphitheatre] in Atlanta, Georgia.... Upon request by [HOB], [CDP] shall also cause its employees to control access to the stage and backstage areas prior to, during[,] and after each [a]ttraction. *[CDP's] employees will also use their best efforts to direct and control the audience, to deter any crowd disturbances[,] and to prevent fights or other violent acts among the patrons.*

Id., 289 Ga. App. at 185. (emphasis original)

In CDP, despite language specifically requiring the security company to control the audience, deter crowd disturbances, and "*prevent fights or other violent acts among the patrons*," the Court still noted that "the fact that performance of the contract *might* benefit [Appellant] does not alone establish the requisite intent. Instead, the contract must show the parties' clear intent to confer a benefit on [Appellant] and other patrons of the Amphitheatre." Id. Thus, Appellant's argument that the language in the contract referencing the safety of "guests and patrons" indicates an intention to benefit Appellant is clearly not supported by the case law given the plain exclusionary language of the Security Services Agreement. Davidson v. Meticulously Clean Sweepers, LLC, 329 Ga. App. 640, 641, 765 S.E.2d 783, 784 (2014) (upholding the grant of summary judgment to an independent

contractor on the grounds that the injured third-party could not maintain a claim against the contractor as "the contract expressly provided that '[n]o third parties ... are intended to, nor shall they be deemed to have a right to benefit from, or seek to enforce, any of the provisions' of the contract").

Thus, despite Appellant's selective quotations from the Agreement, the Agreement explicitly disavowed the intention to create a duty to Appellant on the part of S.A.F.E., and summary judgment should be affirmed.

c. S.A.F.E. was not negligent in performing its responsibilities under the Agreement

Appellant claims that there is evidence S.A.F.E. negligently performed its (non-existent) duties to Appellant. Despite Appellant's recitation of S.A.F.E.'s alleged violations of its policies and procedures, S.A.F.E. designated expert witness in the field of stadium security, William D. Squires, reviewed the testimony and video footage of the subject incident and found that stadium security personnel acted appropriately. (V6:2275-2287). Mr. Squires also reviewed S.A.F.E.'s training and hiring practices and found that they met applicable industry standards. Specifically, Mr. Squires[2] has averred that:

[2] Mr. Squires is one of the stadium security industry's foremost experts, having served as the Director of Stadium operations for Yankee Stadium, the Stadium Operations Manager for Cleveland Browns Stadium (now known as First Energy Stadium), the Vice President/General Manager of Giants Stadium, Operations Consultant to the New York Football Giants for MetLife Stadium, among other security-related positions. (V6:2275-2287).

- S.A.F.E. Management of Georgia, LLC met or exceeded industry standards in its hiring and training practices in advance of the subject event;
- stadium security personnel (including S.A.F.E. employees/representatives) acted reasonably and in accordance with industry standards in discussing the origins of the initial confrontation with the Kravers out in the stadium concourse;
- stadium security personnel (including S.A.F.E. employees/representatives) acted in accordance with industry standards in its handling of the subject event and used best practices in similar circumstances for incidents involving an altercation between fans;
- S.A.F.E. personnel acted in accordance with "use of force" industry standards in working to deescalate the situation for the safety of all involved; and
- stadium security personnel (including S.A.F.E. employees/representatives), acted reasonably and in accordance with industry standards and best practices used in similar situations.

(V6:2277).

Appellant did not designate her own expert witness, and thus Mr. Squires expert testimony is unrebutted. Given the uncontested admissible evidence in the

record, Appellant's claims against S.A.F.E. were properly dismissed. See Plunkett v. H.J. Motels, Inc., 176 Ga. App. 160, 161–62, 335 S.E.2d 449, 450–51 (1985) ("…as an appellate court, we cannot ignore the unrebutted affidavit of a security expert…").

d. Appellant voluntarily inserted herself into an ongoing physical altercation, and as a mutual combatant cannot recover from S.A.F.E.

Finally, Appellant contends that her actions in entering the ongoing affray were reasonable, and she did not lack ordinary care for her own safety as a matter of law. Appellant's Brief at 25-26. It is on this point, however, that it is most clear that Appellant is entitled to summary judgment. Appellant relies on the case of Richey v. Kroger Co., 355 Ga. App. 551, 845 S.E.2d 351 (2020) for the assertion that the evidence is not "plain, palpable, or undisputed evidence that supports a finding that as a matter of law that **no** prudent person would have reacted as [Appellant]…" Appellant's Brief at 26.

However, the facts of the Richey case are not analogous to the case at hand. In Richey, the decedent was shot by an individual who jumped into the decedent's truck while the decedent was nearby clearing debris for his job. When the decedent ran over to the car and slapped the window of the vehicle, the offender shot the decedent through the window, killing the decedent. There, the Court determined that because there was no evidence that the decedent knew the offender was armed when

the decedent slapped the window of his car, a jury could conclude that the decedent could not have appreciated the danger presented by intervening the apparent theft of his vehicle. Richey v. Kroger Co., 355 Ga. App. 551, 553, 845 S.E.2d 351, 354 (2020). That factor is completely missing from the case at hand. Additionally (and importantly), the Richey Court noted that trying to prevent the theft of a car without witnessing the offender committing any overtly violent acts is not equivalent to inserting oneself into an ongoing physical altercation, as Appellant did. Richey, 355 Ga. App. at 553–54. (As Richey did not inject himself into an ongoing fight or situation which was violent, combative, or assaultive it could not be determined as a matter of law that he had knowledge of the risk of being physically harmed.) Appellant knowingly inserted herself into an ongoing physical altercation (including stopping to bend down and pick up her shoe to use as a weapon before rushing into the affray), and thus Richey does not mandate a reversal of the trial court's grant of Defendants' Motion for Summary Judgment.

On the other hand, this case is more analogous to those cited in Appellee's Brief in Support of its Motion for Summary Judgment. The overwhelming weight of the relevant law establishes the foundational tenant of negligent security cases that an Appellant is precluded from recovering when she voluntarily inserts herself into an ongoing altercation despite the risk of possible injury. Cornelius v. Morris Brown Coll., 299 Ga. App. 83, 86, 681 S.E.2d 730, 734 (2009) (affirming grant of summary

judgment where Appellant joined an ongoing altercation); Fagan v. Atnalta, 189 Ga. App. 460, 461, 376 S.E.2d 204 (1988) (affirming grant of summary judgment as Appellant interjected himself into the affray to assist another individual); Habersham Venture v. Breedlove, 244 Ga. App. 407, 409, 535 S.E.2d 788, 790 (2000) (reversing denial of summary judgment when Appellant "voluntarily chose to enter into mutual combat with the assailants"). "Although the issue of a Appellant's exercise of due diligence for his own safety is ordinarily a question for the jury, it may be summarily adjudicated where the Appellant's knowledge of the risk is clear and palpable." Rappenecker v. L.S.E., Inc., 236 Ga. App. 86, 87, 510 S.E.2d 871, 872 (1999) (citing Wells v. C & S Trust Co., 199 Ga. App. 31, 32 (403 S.E.2d 826) (1991)).

This bedrock principle clearly controls the case at hand. It is undisputed that Appellant inserted herself into an ongoing fight between Peter Hill and Kraver, III:

Q: Is it true that you went to the game?

A: Yes.

Q: Is it true that you got drunk?

A: Yes.

Q: Is it true that you got into a fight?

A: I didn't get myself into a fight. It was there.

Q: Is it true that you were involved in a fight?

A: Yes.

(V13:4935).

She could have stayed out of the fight, but she chose to bend down, take off her shoe, and run at Kraver, III. (V13:4929-30; V11:4395; V10:3929). In fact, her use of her shoe as a weapon knocked Kraver, III's tooth out. (V14:5315-5316). It was only after her willing decision to interject herself into an ongoing fight that Kraver, Jr. grabbed Appellant and threw her to the ground, causing her alleged injuries. (V11:4185-86).

The above-cited case law dictates the result. Appellant's knowing and voluntary actions to engage in the fight preclude her claims against S.A.F.E., and her claims should have been dismissed as a matter of law.

IV. CONCLUSION

The undisputed evidence shows that S.A.F.E. did not owe Appellant a duty of care to keep her safe while on the premises, and there is no evidence in the record that S.A.F.E. breached that duty of care even if it existed. Regardless, Appellant's voluntary decision to participate in an ongoing fight operates as an assumption of the risk of injury and precludes recovery against S.A.F.E. For these reasons, S.A.F.E. respectfully requests that the Court affirm the trial court's Order granting S.A.F.E.'s Motion for Summary Judgment.

Respectfully submitted this 25th day of July, 2023.

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This submission does not exceed the word count limit imposed by Rule 24.

CERTIFICATE OF SERVICE

I hereby certify that there is a prior agreement with Appellant to allow documents in a PDF format sent via email to suffice for service. I hereby certify that I have this day served a copy foregoing **S.A.F.E. MANAGEMENT OF GEORGIA, LLC'S BRIEF** upon counsel for all parties to this matter via electronic mail to all other counsel of record to ensure delivery to:

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