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Excessive Celebration - Penalty Declined

Authors: Benjamin West Janke

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In a fact-intensive case, the Louisiana Appellate Court has reestablished clearer guidance in the area of premises liability and noted an important distinction between the role of security personnel as a protection against criminal activity – and not necessarily a guard against accident and injury.

The stage was set: an outdoor party, next to the Harrah's Casino in New Orleans, on the parade route moments before the newly-crowned Super Bowl Champions, the New Orleans Saints, were scheduled to make their way through the streets of downtown in a first-ever victory parade. It was the middle of Carnival season and a week before Mardi Gras day. With all of the excitement, there was of course the potential for some injury.

As detailed in *Beverly K. Zacher et al v. Harrah's New Orleans Management Company*, one injury resulted in a verdict against Harrah's, which was reversed on appeal. In *Zacher*, a seventy-year-old guest of the Harrah's hotel adjacent to the casino found herself in the wrong place at the wrong time when, as she alleged, an unknown bystander fell onto her as the bystander jumped up to grab a promotional white t-shirt that had been thrown into the promenade area. The plaintiff sued Harrah's, as the provider of the venue for the event and the souvenirs, as well as the beer distributing company that had co-hosted the event and provided stage entertainment and an emcee.

For Harrah's specifically, the plaintiff alleged that the company "used an air gun/cannon designed specifically for ejecting the t-shirt into crowds as a means of disbursing the t-shirts and in the process, created a chaotic, uncontrolled environment that resulted in your petitioner being stampeded by fellow patrons." The plaintiff also alleged that Harrah's was negligent in, *inter alia*, "creating a dangerous and hazardous condition on its premises; and allowing a dangerous and hazardous conditions/event (sic) to occur on its property."

The factual inconsistencies in the various accounts of the incident were manifold: the plaintiff recalled the emcee throwing white, rolled-up t-shirts from a stage for 10 to 15 minutes, and Harrah's introduced evidence that it only handed out black towels printed with its logo, the date of the Super Bowl, and "We are the Champions"; the plaintiff recalled that there were 500 people in the crowd, but Harrah's testified that there were only 200 people present; and the plaintiff's own petition, amended petition and testimony provided three different locations for where the accident occurred. The plaintiff's counsel even acknowledged that the allegation of a t-shirt cannon or air gun in the petition was a misstatement.

However, the trial court regarded these inconsistencies and others as issues of credibility, and irrelevant to the issue of causation in any event, because "whether the items being passed out were T-shirts or towels is of no matter, rather there was some method of distribution that caused another patron to reach over [the Plaintiff], lose his balance, and fall back on her." As to causation, the trial court concluded that "Harrah's actions were certainly a cause-in-fact of her injuries and within the scope of protection afforded under the law."

Following the Louisiana "duty-risk" analysis,¹ and analyzing whether Harrah's breached its duty to the plaintiff, the trial court focused solely on whether Harrah's failed to provide adequate security. Relying on testimony by Harrah's that it occasionally brought in additional security officers for larger events, but that no extra security

was provided for this event based on how quickly it came together, the trial court found that "Harrah's should have expected a large turnout due to the enthusiasm of the Saints' victory, as well as planning the event immediately before the parade." Critically, the trial court concluded that "Harrah's breached their duty to provide reasonable care to their patrons when they did not provide adequate security officers for the event"

The trial court awarded the plaintiff \$150,000 in general damages and nearly \$17,000 in special damages,² but it allocated³ only 10 percent of the fault to Harrah's, 15 percent to the distributor/co-sponsor of the party and 75 percent to the unknown patron who fell on the plaintiff. As to Harrah's, the court held that "[i]t was reasonably foreseeable that failure to provide adequate security in the presence of such a large crowd could cause injury if a triggering event not properly managed occurred. That is what transpired here."

On appeal, the appellate court criticized the trial court's disregard for the various inconsistent factual accounts of the accident to establish causation. The appellate court distilled the contested and uncontested evidence to find that, "[a]t best, the plaintiff's testimony regarding the t-shirts established that the M.C. threw three to five t-shirts into the crowd in a ten to fifteen minute interval before the accident. . . . The question presented thus becomes whether Harrah's breached any duty it owed [the plaintiff] based on the M.C., [an employee of the beer distributor], throwing a handful of t-shirts."

The appellate court acknowledged that Harrah's owed the plaintiff, as a patron, a "duty to protect her from the harm of 'fellow guests' or third party patrons." The appellate court reasoned that, "while the proprietor of a public place is not the guarantor of a patron's safety, it owes the duty to exercise reasonable care to protect the patron from harm at the hands of a fellow guest or an employee and to protect the patron from insult, annoyance, and danger," and that "once a business voluntarily assumes a duty to protect, the duty has to be performed with due care."⁴

However, the appellate court disagreed with the trial court's reasons for finding that Harrah's breached its duty to the plaintiff. After restating ample authority for the proposition that "a business owner's duty to provide security focuses on the prevention of crime, not the prevention of accidents," and that "it would take a quantum leap to find that a business is required to provide security to prevent an unforeseeable accident from occurring,"⁵ the appellate court held that, "[t]o the extent the trial court's finding of liability is based on Harrah's duty to provide adequate security, we find the trial court erred legally and factually. Legally, . . . there is no duty to provide security to prevent an accident. Although . . . Harrah's had security present, Harrah's presumptively provided security to prevent or monitor criminal activity on its casino and hotel premises, not to prevent an accident."⁶

The *Zacher* case does not lower the duty of care that a proprietor of a public place has to protect its patrons from injury; however, it restates an important distinction between the role of a proprietor's security personnel and the proprietor's duty to its patrons in general.

¹ Under Louisiana's "duty-risk" analysis, the plaintiff must establish the following five elements by a preponderance of the evidence to prevail: (1) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (2) the defendant owed a duty to the plaintiff; (3) a breach of the duty; (4) the defendant's substandard conduct was the legal cause of the plaintiff's injuries; and (5) damages. See *Perkins v. Entergy Corp.*, 782 So. 2d 606, 611 (La. 2001).

² The Trial Court also awarded the plaintiff's husband (a co-plaintiff) \$25,000 in loss of consortium damages.

³ By allocating only 10 percent of the fault to Harrah's, Harrah's would have only been liable for 10 percent of the judgment.

⁴ *Zacher*, 2014 La.App. LEXIS 357, at *24, n.17 (citing *Luckette v. Bart's on the Lake, Ltd.*, 602 So. 2d 108 (La. App. 4 Cir. 1992); *Anderson v. Clements*, 284 So. 2d 341 (La. App. 4 Cir. 1973)).

⁵ *Id.* at *47 (citing *Fleming v. Hilton Hotels Corp.*, 774 So. 2d 174, 177 (La. App. 4 Cir. 2000)).

⁶ Factually, the Court also observed that there was ample and adequate security for the party in any event.