

BEHIND THE MUSIC: CONCERTS AND LAWSUITS

By Anita Dhar

Guns N Roses Use Your Illusion World Tour

The tour included a Slash guitar solo incorporating The Godfather theme, a piano driven Axl Rose cover of "It's Alright" by Black Sabbath and an extended jam on the classic rock inspired "Move to the City" where Rose showcased the ensemble of musicians assembled for the tour.

Many of the successful performances during the tour were equally matched, and often overshadowed in the press, by riots, late starts and outspoken rants by Rose. While the band's previous drug and alcohol issues were seemingly under control, Axl was often agitated by lax security, sound problems and unwanted filming or recording of the performances. He also used the time in between songs to fire off political statements or retorts against music critics or celebrity rivals.

On July 2, 1991, at the Riverport Amphitheater in Maryland Heights, Missouri, just outside of St. Louis during a performance of "Rocket Queen", Rose jumped into the audience and tackled a fan who was recording the show with a video camera. After being pulled out of the audience by members of the crew, Rose said: "Well, thanks to the lame-*** security, I'm going home!," slammed his microphone on the ground and left the stage. The sound the microphone made caused some fans to think he shot someone, so Slash quickly told the audience, "He just slammed his mic on the floor. We're outta here." The angry crowd began to riot and dozens of people were injured. The footage was captured by Robert John, who was documenting the entire tour for the band. Rose was charged with having incited the riot, but police were unable to arrest him until almost a year later, as the band went overseas to continue the tour. Charges were filed against Rose but a judge ruled that he did not directly incite the riot.

Opening Act

Druyan v. Jagger No. 06 Civ. 13729, 2007 WL 2592352, (S.D.N.Y Aug. 29, 2007).

The purchaser of a concert ticket brought an alleged class action against a band's lead singer, the online ticket selling agency, and the concert promoter. Plaintiff asserted claims under New York law for breach of contract, fraud, prima facie tort, negligence, and violation of truth in advertising statutes. Plaintiff's claims were based on her allegations that the defendants intentionally withheld timely notice of the postponement of a concert, which caused the plaintiff and other ticket holders to incur expenses for travel, food, and alternative entertainment. Plaintiff admitted that defendants offered her and other ticket holders for the concert the opportunity to receive a refund for their tickets or to attend the rescheduled show on November

17, 2006. Plaintiff declined both offers. Instead, she brought suit. The court stated that plaintiff was offered-and rejected-all the relief she was entitled to as a matter of law and that neither she nor any of the class members she purported to represent could state any claim against the defendants. The court, therefore, granted defendants' motion to dismiss the complaint for failure to state a claim.

Maheshwari v. City of New York, 810 N.E.2d 894 (N.Y. 2004).

A member of the Maheshwari religious group, who had been handing out pamphlets in the parking lot of a concert site, was attacked and beaten by four allegedly drunk men. He brought suit against the concert promoter and the city. The court held that plaintiff failed to make a causal connection between his injuries and inadequate security and that there were no reasonable security measures that could have been taken to avert the incident. Further, an unprovoked assault during a concert in a city park was not a foreseeable result of any security breach, as was required to hold the city and concert producer liable. The types of crimes committed at past concerts were of a lesser degree, and would not have led the city and producer to predict that such an attack could have occurred or could have been prevented. The court stated that even if there was a lapse in security in the parking lot during the concert, the injuries suffered by the victim were not the result of such a lapse, but were caused by an independent, intervening criminal act.

Showtime

State v. Carter, 267 N.W.2d 385 (Iowa 1978).

The question presented was whether a pat-down search of defendant as he entered a concert venue violated his Fourth Amendment rights. Defendant and three friends entered Veterans Auditorium in Des Moines together. Defendant was the last of his group to go through the turnstiles. After he had handed over his ticket and had entered the auditorium, he was immediately subjected to a pat-down search by one of the security officers. The officer testified there was nothing about the defendant's appearance or attire to arouse his suspicion. The search was merely routine under the auditorium's policy. After the search was in progress, defendant attempted to escape. He was caught, brought back, and marijuana was found hidden in one of his boots.

The auditorium maintained a staff of about twenty-five off-duty Des Moines policemen who served as security guards. They were in uniform and were armed. The testimony showed that they tried to search everyone, although this was impossible because of the rush of people seeking admission at certain times. The policemen admitted that some patrons got by without any check. Others were given what the officers referred to as an "eyeball" check, a visual inspection to pick up anything suspicious about a person's appearance or conduct. Particular attention was paid to those who had large packages, were wearing bulky clothes, had large bags, or were carrying cases. The Supreme Court held that the random search of defendant, a patron at a rock concert

in a public auditorium, was unlawful in absence of any probable cause or actual or implied consent. The Court noted that “no court has yet approved the kind of random dragnet operation shown by the record in the present case; nor do we.”

Nellis v. Town of Sutherland, No. 06-2043, 2007 WL 2004464 (Iowa Ct. App. July 12, 2007).

On September 1, 2003, plaintiff attended a concert and street dance held as part of an annual Labor Day celebration in Sutherland, Iowa. Plaintiff was listening to the band Zwarte perform, when another spectator, Gary Wilson, climbed up onto the stage with the band. Wilson leapt from the stage into the crowd and landed on plaintiff.

The Labor Day celebration, which has been held in the Town for over seventy years, was organized by a group of private citizens known as the Labor Day Celebration Committee. The Town allowed members of the committee to close a public street for the concert and street dance. The Town also issued liquor permits for the operation of a beer garden during the concert and street dance. Volunteers from the Town's fire department sold admission tickets at the entrance to the event. One or two of the Town's police officers occasionally patrolled the area throughout the band's performance. The committee hired additional officers from the city of Cherokee to provide extra security. Some of the proceeds from the event were donated to the Town.

Plaintiff filed a personal injury lawsuit against the Town, alleging it failed to exercise reasonable care to protect him from Wilson's act in jumping off the stage at the annual concert and street dance, which he asserted the Town “permitted, promoted and sponsored.” The court held that the Town's limited involvement with the celebration was insufficient to render it “[a] possessor of land who holds it open to the public for entry for his business purposes....” The appellate court agreed with the district court's conclusion that the Town did not owe a duty of care to Nellis because the Town did not hold its land open to the public for its business purposes. The district court's grant of summary judgment for the Town was affirmed.

Powell v. Metropolitan Entertainment Co., Inc., 195 Misc.2d 847, 762 N.Y.S.2d 782 (N.Y. Sup. Ct. 2003).

A rock concert attendee brought an action against concert presenters, alleging that loud music permanently damaged his hearing. The concert presenters moved for summary judgment. The court held that the risk of hearing loss was the type of risk the concert attendee assumed by going to the concert, thus precluding the negligence action against the concert presenters. Even assuming that the concert impaired plaintiff's hearing, the court held that the action had to be dismissed for two related reasons. First, there was no standard of care by which a jury could determine based on the evidence presented that defendants had breached a duty owed to plaintiff. Without knowing what is “too loud,” and without knowing how loud the concert actually was, a jury would have to engage in double speculation to conclude that defendants' music was “unreasonably loud.” Second, the doctrine of assumption of risk barred the action.

Goll v. Buggy's Bar and Grill, Inc., 870 So.2d 341 (La. Ct. App. 2004).

A patron who attended a concert at a bar sued the bar owner after he fell on steps attached to the stage. The court held that the steps were not dangerous, and the conditions in the bar at the time of the plaintiff's accident did not create an unreasonable risk of harm so as to impose liability on the restaurant for the injuries plaintiff sustained when he tripped on the stairs attached to the stage. Further, plaintiff failed to exercise ordinary prudence by diverting his attention from where he was walking to the band that was playing. Plaintiff was not paying sufficient attention to where he was walking when he tripped, and the steps did not create an unreasonable risk of harm because they did not violate any building code and they were not in the middle of a walkway.

Godino v. Madison Square Garden, 708 N.Y.S.2d 102 (N.Y. App. Div. 2000).

Plaintiff claimed she slipped and fell as she exited her row of seats at a concert hall. She brought suit against the concert hall and concert producer for her injuries. The court held that the concert hall and concert producer did not have notice of the champagne and strawberries on the aisle stairs on which the plaintiff claimed she slipped and fell and, thus, defendants were not liable for plaintiff's injuries. A complaint by plaintiff's son to security personnel about the rowdy behavior of two women sitting in plaintiff's row who were drinking champagne and eating strawberries was insufficient to impute notice to the concert hall regarding champagne and strawberries on the aisle stairs. Plaintiff's allegations that security personnel would have noticed spillage on the stairs had they been permitted on the floor during the concert was pure speculation, particularly because plaintiff admitted that neither she nor her children noticed the spillage before she fell, and, thus, these allegations provided no basis for holding the concert producer liable for plaintiff's injuries.

Rich v. Tench Elec. Motor Works, Inc., 642 So.2d 293 (La. Ct. App. 1994).

The owner of a warehouse being used for a "jam session" by a band to which spectators were invited, was 35% liable for an accident caused when a drunken spectator walked through an open door and fell off a platform. The platform was ten and one-half feet off the ground and extended four feet from the end of the building and lacked guardrails. The spectator was 65% responsible due to her drunken condition.

Rotz v. City of New York, 143 A.D.2d 301 (N.Y. App. Div. 1988).

On Friday evening, July 22, 1983, plaintiff David Rotz, then 25 years of age, was part of what he described as a "tremendous crowd" that was in attendance at a free Diana Ross concert held in Central Park in New York. Plaintiff brought a negligence action against the city, and the

producer of the concert after he sustained injuries when the concert crowd knocked him down and trampled him. According to Mr. Rotz' testimony, while he was standing during the performance, completely surrounded by people "jammed in like sardines", a commotion erupted and "everybody started running and they just ran on top of everybody". In the course of this stampede, he was unable to move and was knocked down and trampled upon, suffering a serious fracture to his left leg. The court held that a material issue of fact existed regarding whether the city failed to provide adequate crowd control measures and if so whether the intervening conduct of third persons in initiating the stampede in which plaintiff was injured was a normal or foreseeable consequence of the city's failure to adequately supervise the crowd.

McLaughlin v. Home Indem. Ins. Co., 361 So.2d 1227 (La. Ct. App. 1978).

While the owner of a concert hall at which a rock concert was held and the promoter of the concert were under no duty to have the aisles of the hall patrolled during the course of the concert, the risk created by the failure to turn the lights on during intermission was unreasonable. The court stated that concert patrons were expected to move about during intermission either for purpose of obtaining refreshments or to go to restrooms. Plaintiff's un rebutted testimony was that she was proceeding very slowly along the steps, feeling her way along, when she fell. The court held that where the stairway was the only route to the restroom available to her, plaintiff was not negligent in descending the stairs.

Mendez v. Knights of Columbus Hall, 431 S.W.2d 29 (Tex. Civ. App. 1968).

Plaintiff did not purchase a ticket but was allowed to enter and sit at the rear of defendant's dance hall where her husband was playing in a band. While she was walking to the stage at the end of the show, she slipped and fell in an area where a step down was located. The court held that plaintiff was on defendant's premises for her own pleasure or benefit and was a "licensee" rather than an invitee. Therefore, defendant was not liable for plaintiff's injuries in the absence of a showing that defendant violated a duty owed her.

MacDonald v. PKT, Inc., 628 N.W.2d 33 (Mich. 2001).

A concert spectator alleged that he was injured as a result of other audience members throwing sod at an outdoor concert at an amphitheater. The spectator sued the owner of the amphitheater. The court held that a similar occurrence of sod throwing at the amphitheater the day before plaintiff was injured did not provide a basis for imposing a duty on the owner, based on the concept of foreseeability, to protect against the injuries sustained. By having police already present at the concert venue, the owner of the outdoor amphitheater discharged its duty to respond reasonably to the sod throwing by audience members.

Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546 (S.C. 1990).

A jury finding that the injuries suffered by a rock concert patron who was struck by a glass bottle thrown from the balcony of a city auditorium during a rock concert were foreseeable, and thus, that the city was liable for the injuries suffered by plaintiff, was supported by the evidence. The court so held, despite evidence that this was the first instance of bottle throwing at a concert that the director of auditorium security had witnessed in twenty-nine years. However, the court also noted that only fourteen security guards were provided to control a crowd of 6,000, that there was no reserved seating on the main floor. Further, plaintiff testified that he did not see any effort by security personnel to stop drinking, smoking, pushing, or shoving at the auditorium.

Hudson v. Riverport Performance Arts Centre, 37 S.W.3d 261 (Mo. Ct. App. 2000).

Plaintiff was a concert patron who was assaulted with a whiskey bottle on the grounds of an outdoor amphitheater by an unknown man. In plaintiff's suit against the amphitheater and its security service for negligence, the court held that plaintiff could not recover in negligence against the defendants under the special facts and circumstances exception to the general rule of no duty to protect business invitees from criminal acts of unknown third parties. The court based its ruling on the absence of any showing that the amphitheater or security service had any knowledge that the man who assaulted plaintiff was violent or, prior to incident, acted in a manner indicating danger, or any showing that 38 prior assaults at the amphitheater within a five year period were sufficiently numerous or similar to the assault on plaintiff to put the amphitheater or service on notice of the likelihood of danger to plaintiff.

Encore

Florman v. City of New York, 741 N.Y.S.2d 233 (N.Y. App. Div. 2002).

A concert attendee failed to establish that inadequate security was the proximate cause of her injuries which were sustained after being intentionally hit by a car in the parking lot after a stadium concert. The court held that the city and concert producer undertook the requisite security measures since approximately 100 police officers were on duty in the area, including twenty-four officers and three sergeants specifically assigned to the parking fields. Further, the court stated that it was difficult to understand what measures could have been undertaken to prevent plaintiff's injuries. Assuming that the driver of the offending vehicle criminally assaulted plaintiff in the parking, his actions were not a foreseeable consequence of the city and concert producer's alleged failure to provide adequate security. The court stated that although some forms of criminal activity might have been reasonably foreseeable in a gathering of that kind, someone driving recklessly or intentionally, at high speed in a parking field striking by-standers was not a danger normally associated with crowd control.

Sameer v. Butt, 796 N.E.2d 1063 (Ill. App. Ct. 2003).

There was no evidence that a stabbing attack on a concert attendee was reasonably foreseeable by the ballroom where the concert was held or by the security company hired for the event, even though the same assailant had stabbed someone else minutes earlier. Plaintiff testified that there were no disruptions or violent acts at the concert or a warning of any sort prior to his attack. There was testimony that the crowd at the concert involved all age groups and families, that the atmosphere was amicable, and that there was no evidence of prior incidents of violence that would give notice to the ballroom of the probability of such assaults. The court held that public policy did not impose a duty on defendants to protect concert goers from a third party's criminal attack. There were about 1,000 concert goers inside of the large ballroom, and thus the economic burden on the ballroom to protect against any and all criminal acts would be too onerous.

Barefield v. City of Houston, 846 S.W.2d 399 (Tex. App.1992).

The producer of a concert had no duty to protect persons attending a concert from the criminal acts of third parties which occurred on the sidewalks and public streets outside of the coliseum which the producer had leased from the city for the concert. Under the lease agreement between the producer of the concert and the city, the producer did not have control over the areas beyond the coliseum doors. The producer of the concert did not create or cause the dangerous conditions so as to owe a duty to attendees of the concert to warn or protect them from the criminal acts of third parties outside of the leased premises, where there was no evidence that the attackers were intoxicated, attended the concert, or that the producer provided any alcohol or drugs to them. The concert producer's general knowledge of criminal activity in the downtown area of the city where the concert was held was insufficient to raise a fact issue that a confrontation between the attendees of the concert and a group of attackers on the public sidewalk outside of the coliseum was foreseeable so as to give rise to a duty on the part of the concert producer to warn or protect the attendees from the attackers.

Reid v. Augusta-Richmond County Coliseum Authority, 416 S.E.2d 776 (Ga. App. 1992).

A stadium owner did not negligently fail to provide adequate security for invitees at a concert at which plaintiff was shot by a person with whom he had an ongoing dispute. Inasmuch as the city police department provided security for the concert as an independent contractor, there was no support for the claim that inadequate security measures caused the injury, and there was no evidence showing that the level of security was below a reasonable standard of care. The fact that the stadium owner elected to provide uniformed security guards for limited ticket-taking and door-guarding function during the concert, in addition to city police officers hired to provide security inside and outside the stadium during and after concert, did not render the stadium owner liable for injuries suffered by plaintiff who was shot after uniformed security guards refused to leave their post or intervene in the altercation. Plaintiff, due to a run-in with the third party earlier that night at the concert, had superior knowledge of the danger of a repeat attack by

that person and it appeared from the circumstances that plaintiff could have exercised ordinary care to avoid the second encounter during which he was shot.