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### **Humphries v. New York-New York Hotel & Casino, 133 Nev. Adv. Op. 77 (Oct. 5, 2017)**

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## TORTS: INNKEEPER LIABILITY

### **Summary**

An innkeeper is liable under NRS 651.015 if an injured patron can show that they suffered foreseeable harm; foreseeability is established when the innkeeper fails to exercise due care for the safety of its patrons or if the innkeeper had notice or knowledge of prior incidents of similar acts on the premises. Notice or knowledge of prior incidents of similar acts is a case-by-case analysis, and requires the district court consider similar wrongful acts in terms of the location of the attack, level of violence, and implicated security concerns.

### **Background**

Appellants Carey Humphries (Humphries) and Lorenzo Rocha (Rocha) sought to hold Respondent New York-New York Hotel & Casino (NYNY) civilly liable for injuries they suffered during a physical altercation with another patron on NYNY's casino floor. The altercation left Humphries with a skull fracture and other minor injuries. Her companion, Rocha, sustained injuries to his face and head. Security at NYNY's property responded immediately, the attack on Humphries and Rocha lasted a total of 17 seconds. However, the security guard who reported the altercation watched the fight for 12 to 15 seconds until backup arrived.

The district court granted summary judgment in favor of NYNY, finding that the casino did not owe a duty to appellants had no notice or knowledge the other patron would assault appellants. The Court ruled that the district court failed to properly consider the statute. Therefore, summary judgment was reversed.

### **Discussion**

The court reviewed district court summary judgment orders de novo. Summary judgment should only be granted when the pleadings and record establish that no genuine issue of material fact exists.<sup>2</sup>

*The district court failed to properly consider NRS 651.015(3).*

When analyzing NRS 651.015(3), the district court should consider the "totality of the circumstance approach," or consider whether there were prior similar occurrences which create a duty of care. Here, after reviewing *Estate of Smith*,<sup>3</sup> the Court concluded that the district court erred by impermissibly restricting the first part of the statute, and failing to consider the second part of the statute. Indications that a wrongful act may occur are "relevant, not dispositive." Additionally, the district court should have taken further consideration of NYNY's year-worth of

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<sup>1</sup> By Emily Meibert.

<sup>2</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)

<sup>3</sup> 127 Nev. at 860, 265 P.3d at 692 ("[P]roof of prior incidents of similar wrongful acts are sufficient, but not always necessary, for establishing the existence of a duty.").

incident reports detailing on premise assaults and batteries before concluding that the battery on Humphries and Rocha was not foreseeable.

*The district court erred in concluding that NYNY did not owe Humphries and Rocha a duty of care*

NYNY owed a duty of care to patrons like Humphries and Rocha. It was foreseeable that a battery would occur at the NYNY because prior similar assaults had occurred before. As such, The court recognized that a “similar occurrence requires only general likeliness, not factual conformity.”<sup>4</sup> Under *Estate of Smith*, when determining if prior wrongful acts are sufficiently similar, district courts should consider, “the location, the level of violence, and security concerns implicated between the wrongful act in the lawsuit and the prior wrongful acts on the premises.”<sup>5</sup> The court discussed each of the *Estate v. Smith* factors in turn.

#### *Location*

The location of the assault on Humphries and Rocha was similar to the prior incidents. The attack on Humphries and Rocha occurred on the casino floor and was within 200 feet of the locations where numerous prior incidents had occurred. Thus, this should be considered a similar location to the previous incidents.

#### *Level of Violence*

The documented prior wrongful acts the occurred at NYNY involved a similar level of violence—head-butting, punching, and fighting security guards. Here, there was a physical hand-to-hand altercation without the use of weapons. Therefore, this shows a “proportional level of violence.”

#### *Security concerns implicated*

The security concerns for the prior wrongful acts are similar to the security concerns during the battery of Humphries and Rocha. The previous incidents called into question NYNY’s staffing and response time. Here, although the security guard responded quickly, they waited 12-to-15 seconds before intervening. Thus, the concerns for security in previous acts and the instant case were similar.

### **Conclusion**

The district court erred in finding that the NYNY did not owe a duty of care to Humphries and Rocha because the attack on Humphries and Rocha was foreseeable based on NYNY’s notice and knowledge of “prior incidents of similar wrongful acts [that] occurred on the premises.”<sup>6</sup> The Court reversed and remanded this matter for further proceedings.

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<sup>4</sup> See *Similar*, *Black’s Law Dictionary* (6th ed. 1990); cf. *Estate of Smith*, 127 Nev. at 862, 265 P.3d at 693.

<sup>5</sup> 127 Nev. at 860, 265 P.3d at 692.

<sup>6</sup> NRS 651.015(3)

## **Dissent**

(Pickering, J.)

The altercation was not foreseeable. Under *Estate of Smith*, foreseeability requires an analysis of prior incidents that occurred on the casino floor—not in hotel rooms, parking lots, or nightclubs. Instead, the majority second-guesses the judgment of the district court, and enters partial summary judgment against NYNY. Under the majority’s holding, it is hard to imagine a casino floor altercation that will not be foreseeable.