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HILLSBOROUGH COUNTY

(18) RADU CRACIUN vs. 3260 W. HILLSBOROUGH AVENUE, INC., d/b/a WILDS

COUNTY/DOCKET #/JUDGE: Hillsborough / 02-10637 / Perry A. Little

PLAINTIFF(S) ATTORNEY(S): Susan M. Zwiesler, Tampa; Chris Kavouklis of Kavouklis Law Group, Tampa

DEFENDANT(S) ATTORNEY(S): J. Gregory Giannuzzi of Rissman, Weisberg, et al., Tampa

AGE/SEX/OCCUPATION OF PLAINTIFF: 38 / M / Car Salesperson

HILLSBOROUGH COUNTY (Continued)

CRACIUN (Continued)

CAUSE OF INJURY: Premises Liability/Club/Patron Attacked by Several Assailants. On June 3, 2002, Plaintiff was a patron at Defendant's gentleman's club. Plaintiff admitted that he got drunk that evening. Plaintiff stated that when he went out into the parking lot to make a phone call, the club would not allow him to return. A fight ensued, and Plaintiff claimed he was attacked by five individuals, one of whom was carrying a gun. Defendant contended that Plaintiff was escorted out of the club because he had grabbed a dancer. Plaintiff was placed into a taxi and Defendant thought that the matter was over; however, Plaintiff returned, and then called the police. The police arrived and Plaintiff stated that he wanted his cell phone which was in the club. The police found the cell phone, returned it to Plaintiff, and Plaintiff was again placed into a cab. The club closed at 3:00 a.m. Plaintiff returned again after 4:00 a.m. Defendant stated that Plaintiff was drunk, carrying a crowbar and chasing a woman in the parking lot. When employees came out, Plaintiff went to his vehicle and returned holding something behind his back. He approached the manager and struck the manager on the side of the head with a bottle. The manager, defending himself, struck back, knocking Plaintiff unconscious. Through four 911 tapes, Defendant presented a time-line which showed that Plaintiff had been placed into a taxi on two occasions, but kept returning allegedly in order to engage in an altercation. Defendant was also able to use Plaintiff's history to support Plaintiff's agenda. Plaintiff was jailed on three occasions in Romania for attempting to escape from a refugee camp where he had been for over two years; he had a history of psychiatric treatment; and had claimed a few years earlier that he had been handcuffed by police, had a bag placed over his head, and had been beaten up. Plaintiff had also been involved in an assault four months after this incident, after which Plaintiff's treating psychologist wrote that Plaintiff suffered from periods of angry outbursts and was paranoid. Plaintiff filed a negligent hiring/retention cause of action and also contended that the club was negligent for Plaintiff's intoxication. The central focus of Plaintiff's case was the criminal record of the manager who defended himself when being attacked by Plaintiff. The manager was experienced in working security at such clubs, as well as acting as manager. For purposes of notice upon Defendant during the hiring process, the court permitted the jury to hear evidence regarding the manager's prior convictions, one for battery and another for improperly exhibiting a dangerous weapon. The court would not allow evidence of any other arrests, although a 1st DCA decision arguably would have permitted such evidence. Plaintiff also attempted to place into evidence a 1999 incident where the manager, while working for another club, had been involved in a shooting where someone had been killed. The manager, however, had not been arrested or convicted. In addition, Plaintiff attempted to prohibit Defendant from placing into evidence Plaintiff's psychological history, by withdrawing the mental distress claim. The court permitted evidence of Plaintiff's emotional history, as it was relevant to Plaintiff's motivations to become involved in this fight. At trial, Defendant moved for a directed verdict on all counts, citing F.S. § 768.125 which provides that a business which furnishes alcohol cannot be held liable for a person's intoxication unless the business serves someone who is a minor or is known to be habitually addicted to the use of alcohol. The court denied the directed verdict request and also denied a jury instruction based upon the statute.

NATURE OF INJURY: Brain injury; loss of memory; confusion; temporomandibular joint injury (TMJ); difficulty concentrating; insomnia; nightmares; neck and back injuries. Dr. Garner testified that Plaintiff suffered a brain injury, post-concussive syndrome, herniations to his neck that will require surgery, and injury to his back. Dr. Zelin testified that Plaintiff suffered TMJ symptoms and would need surgery.

EXPERT WITNESSES:

PLAINTIFF'S: Rosanna Garner, M.D., Neurology, Tampa
David Zelin, M.D., Dentistry, Tampa

DEFENDANT'S: William R. Greenberg, M.D., Neurology, (I.M.E.), St. Petersburg

VERDICT: *For the Defendant on August 12, 2004.*

DEFENDANT'S ATTORNEY'S COMMENTS: Following opening arguments, Judge Little initially granted a mistrial. The court had allowed defense counsel to talk about a police report concerning another altercation in which Plaintiff was involved. The judge granted the mistrial and sent the bailiff back to dismiss the jury. Defense counsel then requested a recess so Plaintiff's attorneys could confer and decide whether Plaintiff indeed wanted a mistrial. A recess was taken and Plaintiff's counsel returned to withdraw their request for mistrial, waiving any objection regarding error by the court. Defendant wanted to insure that the verdict form did not have the option of the jury placing any negligence upon Defendant. Consequently, Defendant withdrew its comparative negligence count. The jury was left with the sole option, in essence, of believing that either Defendant caused this event, or Plaintiff did. Defendant's Proposal for Settlement was for \$100. Plaintiff demanded \$100,000.

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